Legislative Council

Wednesday, 27 October 1982

The PRESIDENT (the Hon. Clive Griffiths) took the Chair at 4.30 p.m., and read prayers.

QUESTIONS

Questions were taken at this stage.

BILLS (2): INTRODUCTION AND FIRST READING

1. Law Reform (Miscellaneous Provisions) Amendment Bill.

   Bill introduced, on motion by the Hon. I. G. Medcalf (Attorney General), and read a first time.

2. Electoral Amendment Bill (No. 2).

   Bill introduced, on motion by the Hon. R. G. Pike (Chief Secretary), and read a first time.

ACTS AMENDMENT (RESERVES) BILL

Third Reading

THE HON. G. E. MASTERS (West—Minister for Labour and Industry) [4.54 p.m.]: I move—

That the Bill be now read a third time.

THE HON. J. M. BROWN (South-East) [4.55 p.m.]: We had a lengthy Committee debate on this Bill, and I do not intend to say much more in relation to this and the other two Bills which are closely associated with it. However, I would like to ask the Minister a question about land which has been left as part of a deceased estate, or bequeathed by a benefactor, for a special public use. Will this Bill enable such land to be changed easily from its original designation? For instance, if land is left by a benefactor or donated by someone to be used for ladies' amenities, will this legislation enable the designation of the land to be amended? Such an intent has not been canvassed in the past. I am sorry to raise the matter at this stage and I realise the position in which the Minister may be placed. I have canvassed already the view that these three Bills are of such importance that they deserve greater attention than the attention we have given to them, and perhaps they should be inquired into by a Select Committee.

It may be that where a citizen has made a donation of land or bequeathed land to the community in which he has lived all his life, the purpose for which that land is to be used could be altered by a decision of the Minister or a decision of someone within the Department of Lands and Surveys. This matter should be spelt out for the benefit of Parliament because it is of importance to those generous people who want to make tangible contributions which will benefit the community in which they have lived. If the Minister cannot answer the question now, I hope he will eventually inform the House of the situation.

THE HON. G. E. MASTERS (West—Minister for Labour and Industry) [4.59 p.m.]: I do not believe the legislation before the House will change the existing situation. Nevertheless, I respect the honourable member's concern and I agree with him that it is a matter of importance. He would know, as I know, that where such land is given to the community for a particular purpose, that land is guarded jealously by the community, and so it should be. I do not believe there will be any change in the present system of the recognition of land so donated. I undertake to gain an answer from the responsible Minister setting out clearly the direction in which the Government will move in this area, if at all. If, as I believe, there is to be no change, I will ensure that the honourable member receives a written reply.

Question put and passed.

Bill read a third time and passed.

BILLS (2): THIRD READING

1. Land Amendment Bill.
2. Land Amendment Bill (No. 2).

   Bills read a third time, on motions by the Hon. G. E. Masters (Minister for Labour and Industry), and passed.

MOTOR VEHICLE (THIRD PARTY INSURANCE) AMENDMENT BILL

Second Reading

Debate resumed from 13 October.

THE HON. J. M. BERINSON (North-East Metropolitan) [5.01 p.m.]: Christmas comes but once a year, but in 1982 it looks like coming twice for a number of insurance companies. I say that because, as I understand the effect of this Bill, it will make a gift of at least $5 million to these companies. The cost of that gift will be met by Western Australian motorists.

The position appears to arise in the following way: In 1943, compulsory third party insurance was introduced in respect of motor vehicle accidents and the MVIT was established as the sole insurer for the risks involved. Participating insurers were included in the system as what

might be described as "limited reinsurers" or "limited guarantors".

The idea was that if the trust lost money in any year the combined participating insurers would meet the loss or that part of the loss equal to five per cent of the premiums in that year, whichever was the less. Conversely, if the trust made a profit in any year, the participating insurers would share in that profit on the same basis.

Given the nature of the MVIT as a State agency, its monopoly position, and the compulsory nature of the third party insurance scheme, it is not at all clear why participating insurers were needed in the first place. I have not researched the question, but I suspect that the reasons are much more likely to have been political than economic.

Be that as it may, the purpose of this Bill is to bring the system of participating insurers to an end. In what appears on the face of it to be an eminently fair and balanced solution to an associated problem, the Minister says this at page 5 of his second reading speech—

> As there are a number of years for which the trust has not yet finalised claims, it is necessary to make some provision with respect to the position of participating insurers so far as the financial results of those years are concerned. This has been dealt with by providing that all participating insurers shall lose whatever entitlement they might otherwise have had to a dividend from a surplus year and to be freed from any liability to contribute to a deficit.

The question is this: Is this solution as reasonable as might at first sight appear? A number of difficulties are in the way of a quick answer to the question, among them being the long time lag between the time at which payments are made to or by participating insurers and the time at which the liability for those payments arose. For example, the last published accounts of the trust are for the year to 30 June 1982, and payments to participating insurers in that year were for the activities of the trust to 30 June 1975; that is, seven years earlier.

To assist an explanation of the position, one other preliminary comment is necessary, and this relates to the ability of participating insurers to withdraw from the scheme.

By section 3L(6a) of the Act, a participating insurer can withdraw from the scheme effective from 30 June in any year, provided that it gives notice to that effect by 31 December of the preceding year.

From an answer to question 470 of 16 September 1982, the following emerges: On 1 July 1970, there were 49 participating insurers. Two withdrew with effect from 30 June 1973 and a further two withdrew with effect from 30 June 1974. Up to this stage the trust was recording annual profits and making regular payments to the participating insurers.

In the 1974-75 financial year the first substantial loss was anticipated and, with the writing on the wall, something of a stampede by departing insurers occurred. Ten withdrew in the year ended June 1975; five in 1976; two in 1977; two in 1980; two in 1981; and six in the year ended 30 June 1982. This leaves only two participating insurers at present, and one of those with a negligible interest.

The difference between the original 49 participating insurers and the number I have indicated have withdrawn, is accounted for by amalgamations of insurance companies in the meantime.

It only remains to be indicated in this respect that I can find nothing in the Act to suggest that withdrawing participating insurers do not remain liable for their share of any loss to the date of their withdrawal.

Indeed, the opposite seems to be the effect of section 3P(8)(a) of the Act which reads as follows—

> (8) (a) The deficit, if any, to the debit of each account referred to in subsection (4) of this section that remains after all claims referred to in that subsection have been finalised, becomes the liability of the participating approved insurers during the year to which the account relates in proportion to the interest of each of them in the Fund during that year and the Trust may recover from each participating approved insurer the proportionate amount at any time deemed expedient to the Trust.

I make it clear that much of what I am saying in this part of my comments depends on the understanding which I have of that subsection and I invite the Minister to indicate when he replies subsequently whether I am in error in that respect.

I turn now to payments to and by participating insurers to this time, and the likely course of events if this Bill were not passed. The position since 1965 is summarised in the answer to question 471 of 21 September 1982, and I seek leave to have that question and answer incorporated in *Hansard*.

Incorporation of Material

By leave of the House, the following material was incorporated—

TRAFFIC: MVIT
Participating Insurers

471. The Hon. J. M. BERINSON, to the Chief Secretary representing the Minister for Local Government:

(1) In what years since 1965 has the Motor Vehicle Insurance Trust made payments to or received payments from participating insurers?

(2) In each case, what amount was involved?

The Hon. R. G. PIKE replied:

(1) and (2) Receipts from participants since 1965—

Financial Year Ending	$
June 1967	208 087.21
June 1968	5 287.64
June 1969	389.22
June 1970	14 169.45
June 1972	156.00
June 1973	518.97
June 1974	32 432.29
June 1975	129.74

Amounts paid by trust to participants since 1965—

Financial Year Ending	$
30-6-1968	242 506.65
30-6-1971	167 107.03
30-6-1973	169 877.34
30-6-1974	323 149.68
30-6-1976	305 030.64
30-6-1978	1 093 339.45
30-6-1979	716 112.30
30-6-1981	761 096.25
30-6-1982	2 262 679.00

The Hon. J. M. BERINSON: From this answer it would appear that, since 1965, in round figures, participating insurers have paid $261 000 to the trust. In the same time they have been paid $6.04 million by the trust. Therefore, they are about $5.7 million ahead as things now stand. However, their future prospects are less bright, because the above figures cover the insurance years to 30 June 1975 and since then it has been downhill all the way.

From the annual reports of the trust to 30 June 1981, by which time all private insurers for practical purposes had withdrawn, I have drawn up a table which I now distribute to members.

The table is in four columns showing the year, the estimated surplus or deficit for that year, 5 per cent of premiums for that year, and the estimated amount payable by or to participating insurers in respect of that year. Any surplus requires a payment to, and any deficit requires a payment by, the participating insurers.

I seek leave to incorporate the table in *Hansard*.

Incorporation of Material

By leave of the House, the following material was incorporated—

ESTIMATED PAYMENTS TO OR BY PARTICIPATING INSURERS

Year Ended 30th June	Deficit (d) Surplus (s) $	5% of Premiums $	Estimated Amount Payable $
1976	5.24m (s)	.262m	262 000
1977	.543m (d)	1.327m	543 000
1978	7.476m (d)	1.389m	1 389 000
1979	10.492m (d)	1.872m	1 872 000
1980	15.051m (d)	2.06m	2 060 000
1981	27.991m (d)	3.07m	3 070 000

The Hon. J. M. BERINSON: It will be seen that in the period from the 1975-76 financial year to 30 June 1981, the amount payable to participating insurers is limited to $0.262 million in respect of the year ended 30 June 1976. As against that modest sum, are the following payments due to be made by participating insurers if not for the present Bill—

	$ million
1977	0.543
1978	1.389
1979	1.872
1980	2.06
1981	3.07

Assuming, therefore, a continuation of the seven-year lag in finalising accounts, this would mean that the trust could look to receive from participating insurers, even if both remaining insurers pulled out now, a net amount of about $8.6 million by 1989.

This Bill releases the participating insurers from that commmitment and it is in this light that the Minister's attempt to present the deal as being balanced as between the trust and the participating insurers should be judged.

The Hon. R. G. Pike: May I ask a question in order that I know I heard correctly? You said earlier that section 3P(8)(a) in your judgment meant that those participating insurers who were withdrawing were still liable for the loss,

notwithstanding the Bill before the House. Did I understand you correctly?

The Hon. J. M. BERINSON: No; if not for the Bill before the House that would be the situation.

On any basis it seems to me that judgment must show that the participating insurers are doing very well indeed and that the premium-paying Western Australian motorist is down the drain by millions.

It is a bad deal from the point of view of the public, and that remains true even if the anticipated trust profit in 1982 is taken into account. Relying on the recent financial history of the MVIT, there is no safe basis for predicting the course of financial affairs of the trust beyond 1982.

Some consideration of the place of the SGIO in all of this is relevant at this point. The Chief Secretary in his second reading speech advised that the SGIO for practical purposes is now the only participating insurer left. There was a suggestion implicit in this that to have two State agencies in this relationship was simply to have funds transferred from one State pocket to another. Several things are wrong with any approach of that sort. In the first place the policy holders of the SGIO are only a proportion of the policy holders of the MVIT, and no reason in principle exists for one group to be called on to subsidise the other. More importantly, losses by the MVIT which led to an accumulated deficit of $52.4 million, and a contingent liability by participating insurers of more than $8 million, were incurred before 30 June 1981. Thereafter the MVIT moved out of the red.

The point is that at 30 June 1981 there were still some very substantial insurance companies among the participating insurers, though neither their rights nor their liabilities extended beyond that date. Apart from the SGIO the insurers to which I refer were the Commercial Union group, RAC Insurance Pty. Ltd., Legal & General Assurance Society Ltd., Mercantile Mutual Insurance Co. Ltd., Sun Alliance Ltd., T & G Fire and General Insurance Co. Ltd., Western Underwriters Pty. Ltd., Westralian Farmers Co-operative Ltd., and F.A.I. Insurance Group. These companies stayed in the scheme while over $5 million was paid out by the trust to participating insurers for the period 1964 to 1975. By this Bill those insurers are to be relieved now from their obligations in respect of the losses since that period. In return for that release they will provide no consideration whatsoever, since there is no question of their having any entitlement to any future profits of the MVIT, even should this be achieved in future years.

I conclude in a rather unusual fashion by acknowledging the need for caution with some of the figures I have used in the course of these comments. I assure the House that I have done my best to present accurate figures, and a fair and proper analysis of them. However, in spite of a long series of questions about MVIT finances I admit frankly that many aspects of those finances remain obscure and confusing. Indeed, on another occasion I will use the circumstances of the trust to demonstrate our inability with current procedures to engage in any useful scrutiny at all of departmental or agency functions.

For the moment I offer just two examples of the sorts of problems to which I refer. The first is this: In the past seven months I have asked on three occasions about the surplus or deficit of the MVIT for the year ended 30 June 1982. On 31 March, in response to question without notice 33 I was advised that the anticipated surplus was $5.5 million. On 16 September 1982 in answer to question 472 I was told that the anticipated deficit was $1.22 million.

The Hon. Tom McNeil: That is to the bottom of the harbour.

The Hon. J. M. BERINSON: Then appeared the audited accounts for 1982, which estimated the surplus for the year ended 30 June 1982 at $11.61 million, or $9.3 million if account was taken of dividends paid. How on earth is one supposed to reconcile all that?

Again the answer to question 472 advised me that the anticipated surplus for the year ended 30 June 1976 was $3.39 million. However, according to the financial accounts of the trust for that year the estimated surplus was $5.24 million—50 per cent more. For the year ended 30 June 1978 I was advised that the estimated deficit was $15.22 million. A comparison with the accounts shows the estimated deficit at $7.47 million—50 per cent less. The only apparent explanation for differences of this magnitude is that the settlement of claims since the original financial accounts were published has led to the substantial changes involved. However, in the absence of extraordinary circumstances which are not apparent and which certainly have not been explained, that explanation could hardly be the case with the estimated deficit for 1980-81. Yet the answer to question 472 suggests a deficit of $7.7 million while the financial accounts list a figure of $27.9 million—almost four times as much.

To a poor simple soul like myself to whom accounts are as Russia was to Winston Churchill—a

mystery wrapped in an enigma—all I can say is that this is very confusing indeed. Interestingly, however, even if the figures in my table are wrong, and the figures in answer to question 472 are correct, the general case I have attempted to make is not weakened. On the contrary, that situation would have the result of indicating that the millions of dollars I have suggested are being left gratuitously with the private participating insurers are in fact understated.

While I do not in any way object to the end which this Bill seeks to bring to the system of participating insurers, the least that might be said is that this situation demands a full and detailed explanation. In the course of the explanation by the Minister I invite him to address himself to these questions: Accepting it is a good idea to end the system of participating insurers, what reason is there to release any participating insurer, particularly any participating insurer apart from the SGIO, from its existing liabilities? Having had the benefit of the scheme in its profitable years, why should participating insurers now be freed from their obligations in respect of the years of loss, especially when this will add millions of dollars to the burden on motorists? Finally, if a release is to be granted to any company, why should it not be restricted to the two remaining companies, the SGIO, and FAI? That could be justified as a balancing off of existing rights and liabilities. Subject to explanation by the Minister, however, I cannot see that that applies to the companies which departed earlier.

The Hon. R. G. Pike: If I may interpose there, I take it that all you are saying is that you support the Bill but you think there is a need for a review of the situation in regard to participating insurers?

The DEPUTY PRESIDENT (the Hon. R. J. L. Williams): Order! I will not allow interjections of that sort to continue. There must be some method under the Standing Orders for this information to be elucidated. I regard these interjections as disorderly.

The Hon. J. M. BERINSON: Of course, Mr. Deputy President, they are disorderly, but very helpful, if I may say so. I do thank the Minister for summarising in a concise way the conclusion of my speech. Indeed, the Minister is correct; I have no objection, and I believe there can be no reasonable objection, to bringing the system of participating insurers to an end. What needs the most careful scrutiny is the provision which sets out to release now departed participating insurers from the contingent liabilities which, on my understanding, exist while the Act is in its present form. So far as those insurers are concerned, their position under this Bill seems to be one of profit all the way, with the motorist paying the bill. That position seems to me to be hard to justify.

I urge the Minister to accept his own invitation to look again at this Bill—in particular, at the provision releasing participating insurers.

The Hon. R. G. Pike: It wasn't an invitation, it was a question.

THE HON. R. T. LEESON (South-East) [5.27 p.m.]: I listened with interest to that which the Hon. Joe Berinson had to say. In fact, I listened with interest not only today, but also on days gone by when he referred to problems associated with the MVIT.

The trust has concerned me for a number of years. Indeed, I made reference to it 12 months or so ago. I did not go into figures as deeply as did Mr Berinson, but I mentioned some figures. Although the points I raised were not the same points as Mr Berinson has raised, I did say that it seemed to me the MVIT was getting out of hand, and that payments by the general public to the MVIT for third party person insurance had escalated dramatically over the previous seven or eight years. I wondered just where that escalation would end.

As the years have gone by there does not seem to have been any slowing down. In fact, the trend is becoming worse, and we have not heard anything from the Government as to what steps it may be able to take to institute some change to this trend.

We are all aware of the insurance claims made against the MVIT. If somebody has an accident which is not his fault he certainly must be compensated in some way—nobody begrudges accident victims that compensation. However, some people have a lend of the system, and I am sure members of this House know I have examples of that occurring. I wonder how we can run this business, the MVIT, without being aware of what the payments will be—the end result.

I will refer to compensation awarded by some judges. At times the Press reports ridiculous amounts awarded as compensation, and at times people who deserved compensation missed out on receiving it.

In some insurance cases judges in the Supreme Court award large sums of money without having a great deal of knowledge of the background of the case. Apart from a couple of pages of transcript there is nothing to justify the judge's decision. It appears a little competition may exist between the judges to see who can award the biggest payout. I do not know where we are going and I do not know whether some constraints can

be put on the courts in relation to this matter. Perhaps the Minister will give his opinion on this matter, which is very important.

I can remember saying some one or two years ago that I did not know where we were heading and the longer the matter is left the worse the position will be. I would like the Government to consider the matter and come up with an equitable solution to this problem.

I ask those members who licence their own vehicles: How much does it cost? The vehicle registration fee is three or four times less than the Motor Vehicle Insurance Trust premium, yet not so long ago the costs were 50/50. In six or seven years' time the premium will be seven or eight times that amount. The public should not be hit all the time and should not pay this amount because seven or eight judges say that it must be paid. I invite the Minister to make some comment. I do not care how long we spend debating this Bill, but unless we get down to the nitty-gritty this sort of thing will go on forever and a day.

THE HON. W. M. PIESSE (Lower Central) [5.33 p.m.]: Very briefly I must add my comments following those of the Hon. Ron Leeson, because I, too, have raised in the House the question of MVIT premiums and the allocation of amounts for damages in various cases. The Minister, in his second reading speech, said the trust has not yet finalised claims for a number of years and you, Mr President, will remember I raised this matter some 12 months ago and suggested that perhaps the Government ought to look at some way of putting a time limit on the period for which cases can be dragged out. I realise that it is necessary to find out as near as possible the degree of deficiency that an injured person will suffer permanently. Nevertheless, there are instances in the finalisation of these claims where the time is beyond that which is necessary.

The Minister also mentioned in his second reading speech the fact that two other relatively minor amendments are proposed to sections of the Act in which amounts are specified which have been well and truly left behind by inflation. That is another aspect of dragging out the period in which claims can be finalised.

I am very concerned about the increase in the rate of premiums to the public. However, the problem of increased charges does arise when a statutory fee exists which every person must pay. I realise a large number of road accidents occur and that we have some irresponsible drivers, but the time has come when we must find a better way for irresponsible drivers to be made responsible for their actions rather than levying these fees so severely on those drivers who act responsibly.

Debate adjourned, on motion by the Hon. Margaret McAleer.

ACTS AMENDMENT (MINING) BILL

Second Reading

Debate resumed from 13 October.

THE HON. R. T. LEESON (South-East) [5.36 p.m.]: It does not surprise me that amendments to the Mining Act are before the House at this early stage considering that the new Act was proclaimed only last year. It would be easy for me to say, "I told you so", but I am not one of those persons who believes in that because experience proves many people wrong. However, those members who were in this House at the time that Act was debated, will remember the lengthy debate that ensued and probably they will be a little tongue in cheek if they speak on this Bill. We were told at the time the debate took place that perhaps we were not on quite the right track in respect of some areas of the Bill.

I wonder whether the situation in which we now find ourselves would not be worse if the mining situation in WA was not as it is today. Unfortunately, there has been a slowing down in the mining industry in WA over the last 12 to 18 months and I wonder if the new Mining Act has had any bearing on that situation. I realise, of course, that the economic situation not only within Australia but also overseas is not what we would hope for. From my discussions with people in the mining industry it has been revealed that the Mining Act has not done a tremendous amount to foster prospecting in WA. One has only to look at the number of claims registered throughout the State recently to know that is correct.

I do not intend to speak at length on this Bill because I well remember what took place at the time the current Act was debated and how long it took before it was enacted. The Act was debated at the end of 1978 and it was proclaimed last year, and in less than a year the Government has seen fit to put forward a number of amendments.

The proposed amendments to the Act are all matters that were raised in this place and certainly in another place during the 1978 debates. At that time the Government looked starry-eyed at the Opposition and said that it did not believe the Opposition knew what it was talking about and we were told to keep quiet so the House could adjourn because it was late. Not many of us were in the best of moods during that time.

During that debate I referred to the lack of provision for the mining of precious metals. As I came from Kalgoorlie this subject was dear to me because precious metals have been mined in that area for over 100 years. The Government brought forward a provision to change the system to allow people to peg 200 hectares—500 acres—for gold or other minerals. The Opposition pointed out that if three or four leases were taken out the circumstance could arise where the entire Golden Mile could be pegged.

One must take into consideration that in the 80 years that the Golden Mile has been in operation in excess of 90 separate companies mined in the area with some making large profits and some making reasonable profits—in the old language, "In those days everyone got a quid." Those companies obtained their money from one square mile of gold-bearing ground. Of course, enormous fights occurred between the companies; that was the order of the day at the time, but they all managed to exist alongside one another.

However, "big is beautiful" now applies and goldmining leases of 200 hectares can be pegged. Restrictions were not placed on the ore that could be mined and I hope the Government has learned by its mistakes.

A number of situations have arisen as a result of the 1978 Act. One concerns mining on private land and Crown land, and we all know what happened to the pastoralists and farmers. Certainly it was not what they thought would happen.

The Government has now had a further look at the appropriate section of the Act, and an amendment on the notice paper relates to it. This section of the Act certainly affects the constituents of those members in this place who have mining and pastoral industries in their electorates.

We have been able to come to some sort of reasonable compromise in relation to that. I would not like to say I am positive it will work; only time will tell. However, it is a compromise that certainly should be tried because the situation that prevails currently cannot continue.

One of the great problems I see about mining on private land relates to the reasonable steps that a miner must take to contact the owner of the land to obtain permission to mine certain areas. Perhaps we can debate this matter during the Committee stage because other members no doubt will wish to comment on it.

From my experience, and after talking to prospectors, the Act needed amendment. The Government has gone part of the way towards solving the problem. I will have more to say during the Committee stage, but at this stage the Opposition supports the second reading.

THE HON. A. A. LEWIS (Lower Central) [5.46 p.m.]: It was interesting to hear Mr Leeson talk about the problems in relation to mining on private land, because, as far as I can see, the Government has not yet made up its mind about mining on Crown land. The Minister intends to introduce a shocking amendment in regard to mining on private land. It makes one think that maybe certain people in this community receive privileged treatment in regard to farming and pastoral areas. I reject out of hand the amendment which the Minister has caused to be placed on the notice paper.

So that he is prepared to answer questions during the Committee debate, I will try to outline my objections to this proposed amendment. Let us look at what it will do. Clause 6 of the Bill proposes to amend section 20 of the principal Act, and subparagraph (ii) of paragraph (b) proposes to delete the words "otherwise directs" and substitute other words. At present, this provision commences "unless the warden, by order, otherwise directs". I would have thought that gave the Warden's Court all the power in the world, and that all the other verbiage is included for cosmetic purposes only.

Section 147(1) of the Act provides that, except as provided in section 151, any party aggrieved by any final judgment, determination, or decision of the Warden's Court, may appeal therefrom to the Supreme Court.

Under the Act at the moment, if a person with a mining tenement or a miner's right does not comply with the conditions which the Warden's Court has imposed, any person who feels aggrieved may take the matter on appeal to the Supreme Court. Why do we need all this other verbiage about "100 metres away from any Crown land for the time being under crop", and so on? On that point, the distance of 100 metres seems to be a rather long distance to insist upon in relation to a miner's right.

I would not think that a person prospecting with a miner's right would use chemicals which could affect a crop. I do not know too much about prospecting, having been out only a few times, but it does seem to me that it is quite unnecessary to lay down a distance of 100 metres that prospectors must keep away from such things as stockyards. I feel we are over-controlling the prospectors.

In the past I have had a little involvement with the pastoral and mining industries, and I am aware that disagreements have occurred. How-

ever, in my experience, most of the disagreements have been between prospector and prospector rather than between pastoralist and prospector. Perhaps a member who represents a mining area will be able to tell us what such fights are likely to be about. It sounds a little like the Martins and the McCoys—I thought we had left those days behind.

We do not need all this verbiage. An aggrieved person has the power to take action through the Supreme Court, and it seems to me we are making mountains out of molehills, especially after one looks at the private land provisions which permit farmers to refuse to allow mining, virtually just because farming is their way of life, and they do not want miners to enter onto their land.

I tend to believe we are reaching the stage of designing mining legislation to encourage mining in the State, only to say to miners, "You can take all the minerals, except the iron ore, you can do this and do that, but do not upset anyone who has anything to do with agriculture." It just might be in the interests of the nation if mining were more important than the pastoralists.

The Hon. P. H. Lockyer: What a lot of nonsense. You are not serious? Just say that again, so I am sure I didn't mishear it.

The Hon. A. A. LEWIS: Well, I am horrified. I said it might be in the national interest that mining could be of more value to the nation than pastoralists' pursuits on a piece of land, and the honourable member says that is nonsense.

The Hon. P. H. Lockyer: I say it is absolute nonsense. I would like you to go to Gascoyne Junction and say that!

The Hon. A. A. LEWIS: I will go anywhere and say it.

The Hon. P. H. Lockyer: They would hang you.

The Hon. A. A. LEWIS: They may hang me, but I would think that pastoralists are fair-minded people, and they would understand my statement.

The Hon. P. H. Lockyer: I would like your own electors to hear you say that.

The Hon. A. A. LEWIS: I make those statements every day. The honourable member has tunnel vision—he goes around with only one thing on his mind. At least his elastic-sided boots will expand; his mind will not. We are talking about mining legislation, and the best interests of the nation. Is the Hon. Phil Lockyer prepared to sit there and say, "If there are minerals there which we need for the nation, you may go on running your pastoral property come hell or high water"?

The Hon. P. H. Lockyer: I did not say that.

The Hon. A. A. LEWIS: Yes, the honourable member did.

The Hon. P. H. Lockyer: Do not misrepresent me. I said that what you were saying about the pastoral industry was absolute nonsense. I will have my say later.

The PRESIDENT: Order!

The Hon. A. A. LEWIS: The honourable member changed his tack when he woke up to what I said. I do not want to bore the House while I explain something to a member who does not catch on very quickly.

The Hon. P. H. Lockyer: Junior members!

The Hon. A. A. LEWIS: I understand that when we do things in the national interest it is because they are important for the good of the nation. It may be that a piece of land that is being farmed could be better used for something else.

The Hon. P. H. Lockyer: Depending on who determines what is the national interest, and let us hope it is not you!

The Hon. A. A. LEWIS: That is another one of the honourable member's less intelligent remarks—it happens to be both he and I, as members of this House, who decide what is in the national interest.

I will leave that subject because I believe the Minister will reply sensibly to the points I have made. I hope he can explain why the situation is as it is.

I would like to refer to the Hon. Ron Leeson's comments about the economic conditions. I believed that when things got tough, we had more prospectors because more people went out to take the risk of prospecting. It may be that people are becoming a little softer and do not like going out prospecting any more.

I congratulate the Government on the inclusion of about two-thirds of the provisions that Mr Leeson said the Attorney General told us we did not need when the mining legislation was before us on a previous occasion. I will not embarrass the Attorney any further, and I will not take part in the Committee debate. However, I hope that before I leave this place, in many years to come, proper mining legislation is introduced, and we do not amend the parent Act year after year in an *ad hoc* way.

I feel that the amendments in the Bill and the proposed amendments on the notice paper will ruin the Act, and I remind members that other Mining Bills have been presented to this House which would have been perfectly acceptable, and which would have avoided the necessity for all these amendments. You may recall, Mr President,

one private member's Bill which would not have needed all this nonsense, and which would have enabled the mining industry to carry on to future successes.

Debate adjourned, on motion by the Hon. Margaret McAleer.

SESQUICENTENNIAL CELEBRATIONS

Tabled Papers

THE HON. G. C. MacKINNON (South-West) [5.59 p.m.]: I seek leave of the House to table some documents relating to the 150th celebrations of the Legislative Council.

Leave granted.

The Hon. G. C. MacKINNON: I thank members for granting me leave to table these documents and sundry articles.

Sitting suspended from 6.00 to 7.30 p.m.

The Hon. G. C. MacKINNON: Before the tea suspension the House gave me leave to lay on the Table of the House sundry items connected with the 150th anniversary celebrations of the Legislative Council. These consist of a jarrah block upon which is set a plaque describing the laying of the memorial stones in the City of Perth, and a trowel. The plaque is shaped to fit into the historic memorabilia cabinet and reads—

LEGISLATIVE COUNCIL
150th ANNIVERSARY
CELEBRATIONS 1982
TROWEL USED TO LAY
COMMEMORATIVE
PAVING STONES
Monday 8th February 1982
By the Rt. Hon. Lord Mayor of Perth,
SIR FREDERICK CHANEY, K.B.E., A.F.C.,
in the forecourt to
COUNCIL HOUSE.
Wednesday 10th February 1982
by His Excellency the Governor, SIR RICHARD
TROWBRIDGE, K.C.V.O., K.St.J.,
in St. George's Terrace adjacent to
GOVERNMENT HOUSE.

In these difficult economic times members will be pleased to know that the trowel cost just $1.37 and was given to the people by the Rt. Hon. the Lord Mayor in order that His Excellency the Governor also could use it for the paving stone he laid.

As well I wish to lay on the Table an album which contains two pamphlets produced for the occasion. One is titled "150 Years" and the other contains the speeches made on the occasion of the special sitting. It contains pictures of the opening, the plaque, the presentation of the painting by the Premier, the laying of the paving stones in the city, the meetings in this Chamber, the party which members of the staff both past and present attended, the river trip, the wine bottle labels, the students who acted as guides for the tours of Parliament House, and finally the dinner held. A number of pictures of members appear also. This was arranged by Mr Les Hoft, the Clerk Assistant and Usher of the Black Rod. Members might notice that they appear in photographs of the various groups.

I have several other items to lay on the Table of the House and they include a number of files which consist of various items, some stamped addressed envelopes, a number of correspondence lists of guests, and similar material. Included are minutes of the meetings of the committee and the Legislative Council 150th anniversary correspondence file (1) and (2). It was decided by the committee that all these items should be tabled. It was always the express intention of the committee to leave as much information as possible for the records in respect of the running of the anniversary celebrations.

Mr President, when you first appointed the committee we naturally looked back to previous festivities of a similar kind. As with the State's 150th anniversary when we looked back to the 100th anniversary in 1929, so too when we looked back to 1932 to the 100th anniversary of the Legislative Council, we were disappointed at the dearth of information. So far as possible your committee has ensured that copies of our historical events have been filed. As detailed a set of records are contained herein as has been possible for the committee to devise.

Mr President, on 15 April 1981 Mr Les Hoft handed to you a brief missive officially reminding you that 7 February 1982 would mark the 150th anniversary of the first sitting of the Legislative Council in Western Australia. Therein he made some suggestions as to possible festivities. Immediately thereafter, Sir, you asked me if I would accept the position as chairman of a committee to conduct the festivities. I was indeed proud to accept the honour you bestowed upon me.

The committee, comprising the Hons. H. W. Gayfer and J. M. Brown, with the Clerk Assistant and Usher of the Black Rod (Mr L. A. Hoft) as its secretary, had its first meeting at Parliament House on Wednesday, 30 May 1981 at 12 noon. Mr Speaker was requested to nominate a representative of the Legislative Assembly. The Speaker nominated the Hon. Colin Jamieson, MLA, who kindly agreed to participate. The

Speaker and yourself, Sir, were *ex officio* members of the committee.

May I say at this stage, Sir, that no matter how careful you might have been about the selection of the committee, so far as its membership was concerned, you could not have done better. Messrs Gayfer, Brown and Jamieson worked assiduously and constantly produced new ideas. It has rarely been my privilege to work so harmoniously on any committee.

Mr Les Hoft, as secretary to the celebrations committee, did an outstanding job and we all owe him a very real debt of gratitude. Mr Hoft has asked me to make specific mention of Miss June McKinnon. Miss McKinnon did a great deal of typing and Mr Hoft advises me that without her assistance we would have faced a number of crises beyond our control to resolve.

May I take this opportunity of saying that from the initial appointment of the committee we received a great deal of co-operation and enthusiasm wherever we sought it. A number of people assisted in a very special way. Mr J. B. Roberts, erstwhile Clerk of this House and the Parliaments, was extremely helpful in historical aspects of the Chamber duties. He also collaborated as President of the National Trust and had a great deal to do with the historical memorabilia which was in place during the celebrations. It was he who suggested the historic river trip.

Mr A. E. Williams sought the co-operation of the Royal Historical Society. Through that society, members will recall, a great deal of the early history of Parliament in Western Australia was on display.

Very early in the piece the co-operation of the House Controller (Mr Bernie Edmondson) and through him the gardener (Mr Arnold Rowden), were obtained to ensure that the House and environs were in first-class order for February 1982.

Indeed, all the Government departments from which we sought assistance were helpful in the extreme.

Special mention must be made of the Public Works Department, the Art Gallery, the Library Board, and the Government Printer. All these departments entered into the spirit of the event; not only was the assistance sought readily rendered, but all their representatives came forward with worthwhile suggestions and ideas.

Anyone interested can obtain the details of the arrangements by a perusal of the minutes.

The then Premier (Sir Charles Court) was approached to see if the Government would be prepared to make some gift to Parliament to mark the occasion. Sir Charles and I had several discussions about this matter. The final decision was to mark the occasion by the production of an appropriate historic painting. Sir Charles authorised the commissioning of the painting of an early meeting of the Legislative Council, now hanging in the first-floor foyer. The work was entrusted to the noted portrait artist Mr Owen Garde. In line with the attitude which I have already enunciated, Mr Garde entered into the spirit of the event with vigour and enthusiasm. He did a colossal amount of research and produced what everyone agrees is an outstanding painting.

It is interesting to note that what pictures are available of the people portrayed in the painting were of them in their late years of life. It must be recalled that photography was not invented until some 30 years after the meeting. It follows then that Mr Garde had to reduce the ages of the pictures available to him by some 30 years. This he has done with outstanding success. Indeed, when the great grandchildren of some of these people saw the painting they commented on the remarkable family likeness.

Only local materials were used. The painting is framed in jarrah highlighted with gold leaf. Altogether I think it is generally accepted as a notable addition to Parliament House.

Needless to say, early contact had to be made with Mr Vin Hart (Secretary to the Governor) and Mr Bob Davies (Under Secretary to the Premier's Department). A message from the Queen was required. A special meeting of the House had been decided upon quite early and the co-operation of the armed services was required.

Not everything initially tried was found to be successful. One of the early proposals was the re-enactment of an early occasion to be held in the Legislative Council Chamber. To this end the co-operation of Mr Edgar Metcalfe was sought and obtained. Despite a considerable amount of effort by Mr Metcalfe and others, the plan in the end had to be abandoned.

The reason it was abandoned was that the minutes of the first meeting, which we have, were recorded in a very sketchy fashion. There is no record of conversations and it was found impossible to get any sort of life into any enactment. February is a hot month and, for other reasons, the proposal was dropped. Nevertheless, I would like to express officially my thanks for the help and advice which Mr Metcalfe gave us.

Mr Lionel Farrell, Clerk Assistant of the Legislative Assembly, helped enormously. It was Mr Farrell who did a commentary on the films produced by Channel 9. These films, Sir, have never

yet, to my knowledge, received the recognition they so richly deserve. They were an excellent commentary on the development of the parliamentary system in general and on our Parliament in particular. It is hoped that the Education Department has made full use of them. Channel 9 is to be congratulated and thanked for its co-operation. Copies of the films are held in Parliament House, and they can be obtained if members wish to show them.

In the early days of this State's parliamentary life, *The West Australian* newspaper was, of course, the official *Hansard* to Parliament. In connection with the proposed re-enactment, the editor and staff of that newspaper were contacted. In the event nothing came of the plans already mentioned but the co-operation we received was extremely gratifying. The same thing applied, Sir, in respect of visits to the other media, including the ABC.

Ideas came from many quarters. One which I thought was excellent but was subsequently refused was suggested by Mr Lionel Farrell. It was proposed that a coloured leadlight memorial window be affixed in one of the long light panels in the stairwell. This was to be done on a separate panel and affixed inside the present window so as not to disturb it. It was proposed that subsequent special events could be commemorated in the same way. In the event, your celebrations committee was unable to secure the necessary permission.

A commemorative plaque already exists by the first building used by the Legislative Council. This is situated in the foyer of the R & I Bank in Hay Street.

Both His Worship the Mayor (now Sir Frederick Chaney), and His Excellency the Governor (Sir Richard Trowbridge), readily agreed to co-operate in the laying of paving stones in the street. Indeed, Mr President, I was reminded by his Worship the Mayor of the particular nature of Perth's method of commemorating special events with paving stones. The stones have been mentioned already when I laid the trowel on the Table of the House. Many members were present on these occasions.

Mr President, the programme would be fresh in the minds of members and I do not intend to go through it in detail. It is also well and faithfully recorded in the records which have been laid on the Table of the House.

There is, however, one particular matter to which I would like to make special reference. That is the use of high school children as tour guides in the House itself. The initial idea was accepted by the committee and by the Director General of Education (Dr Mossenson). A subcommittee consisting of the Hons. Colin Jamieson, Phillip Pendal and Jim Clarko was formed to meet with Mr Jim Davies, Director of Schools of the Education Department to get together to advise the mechanics of the proposal. They came up with what I thought was a brilliant solution. I understand that the genesis of the idea came from the Hon. Jim Brown.

In short, Sir, 25 metropolitan secondary schools were matched with 25 country secondary schools. Each of these schools was asked to supply one student suitable for the task. Metropolitan students were asked to billet their opposite number from the country. Some shuffling of students was necessitated through reasons of sex and the like but the whole programme worked exceedingly well.

Mr President, I have been asked by your committee to mention this matter specifically, in the hope that the plan may be used on some future occasion. The students whose photos are in the book, thoroughly enjoyed the occasion. Everyone felt that it was very beneficial to them and the Parliament itself.

It will be recalled by members that we had some first-day covers which were sold to the public. This was a profitable venture. It subsidised one or two functions and allowed the committee to keep the prices to members to a bare minimum and still leave a small credit.

Members of the Legislative Council also will recall that the Hon. Norman Baxter collected a donation from each of them. The purpose of this was to provide the trophy for the Legislative Council Cup. This transaction also resulted in a small credit.

It was unanimously resolved by the committee that these moneys should be put together, and lodged in a bank account earning compound interest. The account has as its trustees, you, Mr President, and the honourable Speaker. It is to be used when a similar committee decides, in conjunction with the then Speaker and President, that it could serve a useful purpose in some future celebrations.

Perhaps it will also remind people in the future that one function proposed by this House ran at a modest profit—approximately $160.

I would like to mention many other items but I will not. The decoration of party rooms added some history to the occasion. Members joined in wholeheartedly.

May I, Mr President, thank you for giving me the opportunity to take a leading role in this com-

memoration. My only regret is that I will not be here to accept your invitation to do it again in 2032.

The articles were tabled (see paper No. 487).

Personal Explanations

THE HON. H. W. GAYFER (Central) [7.50 p.m.]: I seek leave to make some observations in regard to these documents.

Leave granted.

The Hon. H. W. GAYFER: It is true that the committee formed by yourself, Mr President, the Hon. G. C. MacKinnon, the Hon. C. J. Jamieson, the Hon. J. M. Brown and myself was entrusted with the job of setting up a suitable 150th celebration for the Parliament in this State.

It was an enjoyable committee to serve on. If anyone says a committee is enjoyable to serve on, that means it was a delight to be part of it. I must commend the members of the committee and particularly the Hon. G. C. MacKinnon because he was the driving force. He certainly got from us the ideas—they may have sounded crazy at the time—that paid off for the celebrations.

The ideas had to be decided upon very early in the piece because we had nothing to refer to. At least now for the future there will be some record to guide members if such an occasion should arise again, as undoubtedly it will.

It is for those reasons we are taking some time of the House to discuss the celebrations. We feel that in discharging the duties that were entrusted to us, it is necessary that they be finished properly.

There is not very much the Hon. G. C. MacKinnon did not mention. The input from the Hon. C. J. Jamieson and the Hon. J. M. Brown as well as myself was mentioned, and I must endorse the sentiments he expressed as far as Mr Les Hoft is concerned. Mr Hoft was the secretary of the committee during the whole celebrations and returned from sick leave last week to attend the last meeting when we formally adjourned, *sine die*, and banked the money which we hope will grow with compound interest in the next 50 years into a sizeable amount. It might even keep ahead of inflation.

The Hon. Graham MacKinnon did not mention a few matters, but I suppose he did that purposely so that someone else could. Perhaps I should start with the decoration of the party rooms. No contest was held for the best decorated party room but we wanted to make members of Parliament feel they were part of the celebrations. Those responsible for the decoration of the Liberal Party rooms, the Labor Party rooms, and the Country Party rooms are to be congratulated. I know that the many people who visited those rooms were intrigued by the memorabilia. That will be retained because some people had to seek it and bring it back to Parliament House. It is not as though we are going clucky over historical matters, but it is about time we took account of ourselves and recorded what has taken place. Perhaps some things do not mean much to us at the moment, but they will mean much to this State in the future.

We organised a river trip with the National Trust. We had a walk on water through the vineyards and judging by the appearance of people when they returned, they thoroughly enjoyed themselves. I had not made that trip previously and it was an eye-opener, to say the least. We were pleased with the support given to the river trip, because at first we did not think it would be popular.

The suggestion of the Hon. Jim Brown to have school children act as tour guides in this House was very successful. Children from all over the State were put through a tutorial course dealing with the history of, and changes in, this place, and tours of the Chambers and the environs of the House. The latter was the responsibility of the Hon. C. J. Jamieson. He did a sterling job. If anyone knows anything about plants and gardening, it is the Hon. Colin Jamieson.

I wish to add a special thank you to the gardeners, who really went out of their way to make the grounds of Parliament House picturesque. I thank them for their extra efforts.

Books were supplied to mark the occasion and were sent to schools throughout the State. These were most valuable to school children and the general community. They went to libraries in the country and favourable comment was received about them.

On a lighter side, 150 bottles of port wine were supplied with the bottles numbered from one to 150. The Governor was given the 150th bottle and one other bottle was given away. As far as I know they were the only giveaways.

The Hon. J. M. Berinson: I was wondering why the Governor did not receive No. 1.

The Hon. H. W. GAYFER: I have forgotten who received bottle No. 1.

The Hon. G. C. MacKinnon: I think it was the President.

The Hon. H. W. GAYFER: Perhaps the Hon. Jim Brown can tell us.

I bought one bottle for each of my children and my bottle is very special because it has already been emptied more than once—I think it is on to its third time. It is still the same bottle, producing the particular bouquet it had in the first instance. The bottle looks grand. I am not a hoarder, I believe in enjoying things when they are there. Mr Hetherington likes a glass now and then so perhaps I should have invited him when I opened it.

We labelled some red and white wine also. This was done not to raise money but to allow people to take away something that might suit them as well as commemorate the occasion.

The tabled documents and artifacts that have been put forward by the Hon. G. C. MacKinnon are things that do concern me. They were handed in, and they are lying on the Table. They are of paper which will deteriorate in time. I believe that in 10 years' time when somebody goes down to the vault under this floor and finds them wrapped up with red binder twine he will say, "Out they go, they serve no purpose." That is why we are trying to record as much as we can in *Hansard* because we hope that will not be destroyed. I hope someone will put the documents in a box, close it, and label it, so it is known that these are all the papers dealing with the 150th anniversary celebrations. In that way they will be ready for those who want to celebrate the 200th anniversary.

A lot of history is contained in the minutes which will be of benefit to somebody else. I believe they are invaluable. We must do something to make sure that they are put in a solid box and suitably labelled so it is not destroyed or thrown out by some person who may mean well. We all know what it is like to throw papers out of our offices, and six months later wish we had not done so because we are looking for them again.

Colin Jamieson cannot speak in this place for the committee, but he was in the Chamber a moment ago listening to us, and we speak for him. It was an enjoyable exercise. The Hon. Graham MacKinnon did a most conscientious job; he was a terrific chairman. Nothing was too much trouble for him, despite the fact that a lot of work was involved. You, Mr President, were the guiding "pusher", if I may use that expression, who made sure everything was done in the right way. I hope we carried out your charge responsibly and that you are happy with the results of the committee's work.

THE HON. J. M. BROWN (South-East) [8.03 p.m.]: I seek leave to add some remarks in relation to the 150th anniversary celebrations.

Leave granted.

The Hon. J. M. BROWN: Unlike the Hon. Graham MacKinnon, I was not quite as proud as he was to accept the appointment when I was first invited by you, Mr President, to be a member of the committee to lay plans to celebrate 150 years of government in Western Australia. Indeed, I was rather concerned, and sought the advice of my colleagues as to the part I should play. The Leader of the Labor Party at the time suggested I should accept the invitation, which I did, acting on his advice and my own inclination. As the celebrations came to fruition I realised the responsibility I had as a member of the Australian Labor Party to support a function which in the main related to the operations of this Chamber. Members of the party I represent were dismayed with its operations.

The reasons for my party and its supporters viewing the Legislative Council as they do would be understandable to all members of this House. Nevertheless, with the opportunity afforded to me and, with the co-operation of the Speaker, (the Hon. Ian Thompson), the appointment of Colin Jamieson to the committee, together with the President who was an *ex officio* member, the Hon. Graham MacKinnon as chairman, and the Hon. H. W. Gayfer as a member like myself, I could see it was one of the most harmonious committees of which anyone could wish to be a member.

Any suggestions made by me or by Colin Jamieson were accepted in the spirit that something had to be done to recognise the establishment of Parliament. Our meetings were carried on in that way for the benefit of the people of Western Australia. It is very difficult for members of the ALP to accept the conditions that I and Colin Jamieson have accepted. I think that the opening day, 7 February 1982, when the President unveiled a plaque, was significant inasmuch as I and my colleague had given our support. This was the spirit in which we laid our plans for the celebrations. I would like to read some remarks which you, Mr President, made on the opening day—

> The celebrations are *not* commemorating 150 years of Parliamentary rule as such. The celebrations are not commemorating 150 years of "home rule".
>
> The celebrations are neither of those things.
>
> Rather the celebration is a recognition of that moment in history ... 150 years ago today when the first tentative steps were taken to put Western Australians on a path which would ultimately lead to full Parliamentary rule.

I would like to refer now to the early part of your comments before you unveiled the plaque, because I want to mention the real effort you made to ensure that this was a people's affair, rather than a parties' affair. You said—

> That first Legislative Council of 5 members was *wholly* nominated by the Crown.
>
> There was *no direct public participation* in the choice of the five.
>
> That state of affairs was to continue—with some small changes—for 38 years.

You also said—

> And as this attitude began to change so too did the desires of the colonists.
>
> Rural people especially came to be in the vanguard of the movement towards a greater local say in *local* affairs.
>
> Thus we saw—in 1870—a *major*, though by no means *complete*, democratic breakthrough . . .
>
> Under Governor Weld's administration 12 members of the new Legislative Council were *elected*.

Further on you said—

> The turning point came in August, 1890, when Queen Victoria gave the royal assent to a bill to grant Western Australia its own constitution.
>
> Thus, Western Australia, under the premiership of John Forrest achieved a two house—or bicameral—system of Parliament.
>
> But there was still progress to be made!
>
> The Legislative Assembly was elective . . .
>
> But the Legislative Council was nominated.
>
> This situation was to alter within 3 years . . . something that was provided for by the constitution.
>
> As we experienced a rapid increase in population . . . the Legislative Council became an *elective* house of 21 members.
>
> Once again, a small but important new step had been taken towards full responsibility for our own affairs.
>
> As late as 1965, full adult franchise for the Legislative Council became a reality.

You also said—

> Does the *extent* of that process satisfy everyone?
>
> Clearly not. Has that evolutionary process come to an end?
>
> Who knows? Because that is the task—if there is a task—for future generations of Western Australians to decide.

I believe that sums up the feelings we have towards the Legislative Council; it is for the people to decide.

I have already mentioned the misgivings within our party—misgivings which were well founded. The task I undertook was to make a contribution towards the celebrations so they would be known throughout the length and breadth of the land, and people would be aware of the operations of Parliament from its inception, and of what was to come in the future. I believed that just as people in country areas wanted a voice in government we should have some of our students looking at the operations of our Parliament and joining in the celebrations. That point has been well canvassed by the Hon. Graham MacKinnon and the Hon. H. W. Gayfer. It was an opportunity for country students to participate, and the attendants and staff are to be complimented for the way in which they organised matters. Additional responsibilities also were placed on Colin Jamieson, Jim Clarko, and Phillip Pendal. In that way, the State participated; it was a new departure, and one that Mr MacKinnon says should be carried on in the future. Mr MacKinnon did not leave a great deal to be said.

It is worthy of note that those present at the Legislative Council's first meeting were Captain Stirling as the first Governor, Frederick Irwin, Peter Broun, and William Henry Mackie. It is notable, however, that John Septimus Roe was not at the first meeting of the Council. The number of people who have received the programme printed for the 150th anniversary celebrations and who have commented on the fact that Roe was not present, is remarkable.

The document is being well read throughout the State and community generally because people are interested. We have been able to increase interest in the operations of Parliament.

As you indicated, Mr President, changes will take place in future. The reward for my participation in the celebrations was your attitude and comments on the day you unveiled the plaque. I believe the feeling of all the members was that this was the start of a new era in Parliament. We are going to make changes; the people have to make them, and we rely on the good sense and co-operation of all who hope those changes may come to fruition. I join with others in saying it was a most harmonious event. I say without fear of contradiction that no alternative point of view was ever expressed at our meetings; the ideas

were put forward and accepted in a spirit of co-operation.

Therefore, a special vote of thanks must go, not to you, Mr President, or to the Speaker, but to Mr MacKinnon. He has had previous experience in celebrations, but his untiring work should not go without mention. His contribution and his willingness to accept the propositions put forward by other members of the committee was such that it could only auger well for the celebrations being so effective. I believe we have made another mark in the history of 150 years that will be there for future generations to see. We have been able to preserve the history of this State in a real and tangible manner. That alone gives me satisfaction for having been on the committee.

However, that is not the reason that I accepted the position. I accepted the position because I was asked to, because I was supported by leaders of my party, and because I felt there was a job to do.

I would like to thank you, Mr President, for the opportunity to be a member of that committee, and the Hon. G. C. MacKinnon and the Hon. H. W. Gayfer for the opportunity to work with them.

THE PRESIDENT (the Hon. Clive Griffiths): Honourable members, I want to take the opportunity, as President of the Legislative Council, to place on record my deep and sincere thanks to the Hon. Graham MacKinnon for his enthusiastic chairing of this very historic and hard-working committee. Together with the Hon. Graham MacKinnon, the Hon. H. W. Gayfer, and the Hon. J. M. Brown, members of the Legislative Council who joined with the Hon. G. C. MacKinnon, did this Legislative Council proud in the way in which they brought to fruition the hopes and desires of those amongst us who sought to have some tangible celebrations to mark this very historic moment for Western Australia.

Together with those three honourable members, mention has been made already of my colleague, the Hon. Ian Thompson, the Speaker of the Legislative Assembly, and the Hon. Colin Jamieson, MLA. All the other people concerned have been mentioned adequately, and tribute paid to the efforts of both the administrative staff and the other staff within this building. I endorse all those comments.

Mention has been made that in the historic record is a pattern that will be able to be followed for the benefit of future generations, and certainly any future celebrations will be much easier to organise than the task that confronted the honourable members whom I have just mentioned.

Mr MacKinnon indicated that also in those records will be some indication that this was one parliamentary committee that actually made a profit and finished up with a surplus. I am pleased to advise you, as trustee of that account together with my colleague, the Hon. Ian Thompson, that we have opened a bank account with $164.36.

The Hon. Lyla Elliott: Don't invest it on the Stock Exchange, will you?

The PRESIDENT: It is invested at compound interest. While I am not a mathematician and I am not able to work out what the exact sum will be, if the money is left there until another celebration is held on 7 February 2032, it will be a sizeable amount. I guess I am about the youngest member here, and I will be the only one here to see that!

Seriously, that fund will be there, not necessarily for the 200th anniversary celebration of this House; as members are well aware, the year 1990 will be the 100th anniversary of the establishment of the Legislative Assembly, and even by that time it might have grown to something more than $164!

Probably one of the most important and significant things that occurred as far as I am concerned as President of this Legislative Council, was the joint sitting of the two Houses on 7 February of this year, in which we received a message from Her Majesty the Queen, in response to a message that I sent on your account to her. Those messages are on record on my right in a frame for the benefit of all members and people visiting this Chamber to read and take notice of in the future. I was proud, as your President, to sign that message. I was equally proud, on your behalf, to receive the message sent by Her Majesty.

In taking this opportunity of thanking you, Mr MacKinnon and your committee, I also take the opportunity, on behalf of the Parliament of Western Australia and the people of Western Australia, to congratulate you on the way in which the celebrations benefited the whole of this State.

The Hon. G. C. MacKinnon: Thank you, Mr President.

JUSTICES AMENDMENT BILL (No. 2)

Second Reading

Debate resumed from 14 October.

THE HON. J. M. BERINSON (North-East Metropolitan) [8.21 p.m.]: Everyone agrees that domestic violence is a serious problem area. Ordinary law enforcement procedures clearly have proved inadequate, and the major reason for that has been the reluctance of the police to act. They

have become very cautious, indeed, understandably so but perhaps to excess, about intervening in almost any domestic situation. Whatever the reason, the fact is that victims and potential victims of domestic violence have been left essentially defenceless. Pressure on women's refuges is evidence of that; but so far as one can tell, that is only a very small part of the story.

This Bill sets out to provide a relatively simple procedure by which domestic violence might be restrained. It will make it somewhat easier for victims and potential victims themselves to seek the court's assistance. More significantly, the Bill gives police officers the power, and by implication, imposes upon them a duty, to intervene in domestic violence situations in a much more active way than now applies. This new, or at least, more explicit police role can fairly be seen, I believe, as the major purpose of the Bill, and certainly it represents a very important change.

The Opposition supports the Bill, but I have to qualify that by saying that our support is more in recognition of its good intentions than an expression of real confidence as to its likely effectiveness. Nonetheless, its intentions are good, and its procedures are better and have more teeth than the current position permits. That is recognised and welcomed by the Opposition and represents our basic attitude to the Bill despite the reservations which some of our members may seek to express.

One serious criticism of the Bill by some lawyers is that the procedures it establishes are to be applied in Courts of Petty Sessions. The suggestion is that that is not an appropriate forum, and that the Family Court is preferable. In that respect, I can only regret the absence, through illness, of the Hon. Peter Dowding. He may not be the No. 1 pin-up boy with Government members, but even they, I believe, will share the general respect for his acknowledged expertise in the field of family law. He has very strong views on the question of forum, and I frankly feel myself unable adequately to represent them.

In lieu of that, I draw attention to the comments of a committee of the Law Society on this subject. I understand its views have been put already directly to the Attorney General. What I propose now to read to the House is an extract drawn from various parts of the comprehensive report of that committee. It says as follows—

> We are, therefore, cognisant of both the need for urgent reform and the problems associated with its implementation.
>
> We are however concerned at the piecemeal approach which the present Bill suggests, and have grave concerns about the Court of Petty Sessions being the appropriate forum to deal with issues of domestic violence.

Under the heading of "Clash of Jurisdiction", this comment appears—

> (a) The Bill in its present form makes it possible for a married person and certain people in de facto relationships to apply for relief to both the Family Court of Western Australia and the Court of Petty Sessions seeking similar redress and involving a clash of Federal/State jurisdiction and State/State jurisdiction.
> (b) Those persons who have the right to apply to both Courts could exploit the legislation, and where they did not succeed initially in one forum it would then be open to them to approach another Court for the same relief.
> (c) It could involve the situation where one party commenced proceedings in the Family Court of Western Australia and the other party commenced proceedings in the Court of Petty Sessions. There is already in country areas a problem where one party proceeds in the Court of Petty Sessions and another in the Family Court.
>
> This legislation would seem to provide just such a further opportunity for conflict within the metropolitan area.

Under a further heading "Orders Restraining a Defendant from entering premises or Limiting his Access to Premises—Section 172(5)(a) and (b)", the comments appear—

> This Section would appear to have parallels with Section 114 of the Family Law Act under which an injunction can be made restraining a spouse from entering upon or occupying premises whether or not that spouse has a legal or equitable interest in those premises. Such applications are not uncommon in the Family Court and the Family Court of Western Australia is extremely cautious in ensuring that both parties are given notice, are both properly heard and that the principles set out in the case of Davis and Davis (1976) FLC 90/062 are adhered to. In view of the familiarity of the Family Court Judges in dealing with these matters, and the appropriateness of their doing so, we would be extremely concerned at the power to make such orders being exercised by judicial officers in a different forum, who had no experience in dealing with them.

> We are concerned both at the possible clash of jurisdiction already adverted to, with a possibility of an unsuccessful party in one forum seeking the same redress in another, and at the Court of Petty Sessions dealing with matters which have hither to been the exclusive province of the Family Court. We are mindful of the fact that when setting up the Family Court and investing it with State jurisdiction the object of that exercise was to ensure that disputes regarding the family and domestic situations were dealt with by the Family Court. The present legislation proposed would seem to cut directly across that principle.

Finally, the committee, towards its conclusion, makes this further comment—

> We urge the speedy revision of procedures in the Family Law Act 1975, Family Court Act 1975-1982 and the Justices Act which will provide uniformity in approach and one forum to deal with the question of domestic violence rather than the conflict of jurisdiction which we feel will inevitably occur if this legislation is passed.

Turning from that broad and important question to the particular provisions of the Bill, I refer firstly to proposed new section 172(1).

This establishes the circumstances in which justices may make an order imposing restraints upon a defendant. The standard of proof required by this proposed new section is on the balance of probabilities; that is the lower or civil standard. That may well be appropriate on an application heard *ex parte*, but where a defendant appears and the matter is heard in the usual fashion, it is not at all clear why the decision should not be required to be of a standard of proof beyond reasonable doubt. After all, that is the usual standard in petty sessions cases and the higher standard would reflect the fact that the status of defendants can be affected seriously by the sorts of orders applied for and that defendants in breach of an order can be exposed to a substantial term of imprisonment.

In turn, this brings me to the penalty provision. This is to be found in proposed new section 173 and the only penalty there provided is a maximum term of imprisonment of six months. As I understand it, that would still leave the way open for such alternatives as community service orders and probation. However, it is difficult to understand why the alternative of a fine should not be included also, especially considering the fact that the present provisions of the Justices Act which deal with sureties of the peace provide for a financial penalty only.

Those are the provisions which will be repealed and replaced completely by this Bill. Agreeing that change is required, the question is: Is it really necessary to go to this furthest extreme?

Proposed new section 172(4) permits an order to be made against a defendant *ex parte*, that is, to quote the words of the proposed new subsection "in the absence of the defendant and notwithstanding that he was not summoned to appear at the hearing of the complaint".

It seems to me that, as a general principle, an order should never be made *ex parte* unless good reason can be shown. Under subsection (4) it is not necessary, for example, to show that the defendant could not be served with a summons or could not reasonably be given notice of the complaint. It is enough that he is not served and that he has no notice of the complaint, and an order against him can then be made.

The problem of principle which this procedure raises is compounded by the fact that, once an order has been made, the onus is on the defendant when the matter comes to be heard to show cause why the order should not be continued. That also is the effect of proposed new section 172(4), and it appears to reverse the usual procedure by which, where an order *ex parte* is made, the onus is on the complainant to show cause why the order should be continued, rather than on the defendant to show cause why it should not.

Proposed new section 174 sets out the procedure by which a person against whom an order has been made may seek the variation or revocation of that order. For reasons of administration, this may well give rise to an unfair detriment to this defendant.

Earlier this week I inquired at the Court of Petty Sessions as to the sort of time scale which might be involved in the hearing of an application for an order on the one hand and in an application for variation or revocation of an order on the other hand.

I am advised that an application almost certainly would be treated as being of sufficient urgency to secure a hearing on the same day where the application is made *ex parte* or on a return date for a summons which, for example, could be as early as two days later. However, a summons seeking variation or revocation of an order is unlikely, in the absence of specific directions, to be treated as requiring the same degree of urgency.

Depending on the particular Court of Petty Sessions involved, delays could, in that event, ex-

tend to six or eight weeks. That does not seem fair and I invite the Attorney General's comment on that.

I ask the Attorney General to comment also on proposed new section 173(3) and (4) and to explain the emphasis on the period of 24 hours within which a defendant must be brought before justices. In particular, I ask the Attorney General to comment, firstly, as to whether this affects the normal availability of bail and, secondly, as to the effect of a detention in excess of that maximum period of 24 hours specified.

I come finally to a lesser matter which is raised by the wording of proposed new section 172(6), which commences with the following words—

> Where an order under this section is made by Justices, the Clerk of Petty Sessions shall cause a copy of the order to be served personally on the defendant . . .

It goes on to indicate that copies should be served also on other people.

Of course, it is very proper that a provision of that sort should be here and the defendant should have in writing the terms of the order made against him; but the question arises from the use of these two words "by Justices". As I read the proposed new section, it has the effect that, where an order under this section is made by justices the defendant should be served with a copy, but it leaves open the question as to what should happen where an order under this section is made by a magistrate, which I expect would be more common.

I cannot believe an intention exists to require an order to be served in one case, but not in the other. However, the wording appears to be faulty in that event and the words "by Justices" should perhaps be deleted.

The Hon. I. G. Medcalf: They always use the word "Justices" in the Justices Act on the basis that the Act was designed for justices; but in fact a magistrate may do what justices can do.

The Hon. J. M. BERINSON: I accept that that is right, but the problem is that section 172(6) does not call on the magistrate to do anything; it calls on the clerk to do something. The Attorney may be referring to section 33 of the Justices Act which does indeed provide that "every magistrate shall have power to do alone whatever might be done by two or more justices". That does not appear to me to cover this situation, because proposed new section 172(6) does not call upon or authorise the justices to do anything; it calls on the clerk to do something after something else has been done by justices. I simply leave that with the Attorney. It is possible a fault exists in the drafting. It is not a major issue, but, nevertheless, it warrants the Attorney's attention.

Having made those points, I return to the basic position which I want to put: It is a shame in many respects that, in this legislation, we are going in advance of the availability of recommendations of a committee which has been set up to examine this very problem. At the same time the problem is serious enough and has enough of an element of urgency to, in my opinion, justify some immediate, positive action. If better recommendations come from the Anderson committee, there is no harm in treating what is proposed to be done by this Bill as an interim measure with the opportunity to take more substantial steps later.

For that reason, I repeat that I support the Bill and, to the extent that it will be effective, it is welcome.

THE HON. LYLA ELLIOTT (North-East Metropolitan) [8.40 p.m.]: This is the kind of legislation in respect of which it would be a distinct advantage to have some legal training or experience in the courts in order to be completely satisfied, firstly, about its effectiveness, and secondly, that it is a law which will ensure protection and/or justice for all the parties concerned.

I have discussed the Bill with a female lawyer who has expressed the opinion that, although it is a slight improvement, it is not a panacea for victims of domestic violence. However, I am prepared to accept in good faith the intentions of the Attorney General to endeavour to provide at least some protection for those unfortunate women and children who live in constant fear of assault, although I find it difficult to understand why the Attorney General has taken so long about it.

Members may recall that I moved a motion in this Chamber over a year ago.

The Hon. P. H. Wells: It was on 22 September.

The Hon. LYLA ELLIOTT: In September 1981 I moved a motion—

The Hon. J. M. Berinson: It must have made a very big impression on him.

The Hon. LYLA ELLIOTT: —calling on the Government to recognise domestic violence is a problem of immense proportions in the community and requesting it to do certain things. I quote what I asked the Government to do in that motion and remind members this occurred over 12 months ago in September 1981—

> That, in the opinion of this House, domestic violence is a problem of immense proportions in the community. We therefore request the Government to—

1. enact legislation to enable the appropriate laws to be changed to give greater protection to victims of domestic violence;

2. urge the Federal Government to amend the Family Law Act so as to attach a power of arrest by Police for breach of an injunction either against threatened violence or against approaching the applicant or the place where the applicant resides;

3. establish in the current financial year a Crisis Care Unit whose function would include the provision of intervention and counselling services related to domestic violence;

4. increase the funding of women's refuges in this State to ensure:
   (a) the ability to accommodate all cases requiring emergency accommodation;
   (b) adequate staffing of refuges;
   (c) appropriate wages for refuge workers;
   (d) recognition of individual needs of each refuge.

It took the Government two months to get around to debating that motion despite the fact that very little business was on the notice paper at the time and in some weeks we did not even sit on Thursdays. Then, of course, the Government threw out the motion. Every Government member voted against my motion while every Opposition member supported it.

A report of the debate appeared in *The West Australian* the next day under the heading "Labor move on violence lost" and reads, in part, as follows—

> The Legislative Council has rejected an Opposition motion calling for greater legal protection for victims of domestic violence.
>
> Instead, it passed a Government amendment to the motion calling for the Council to recognise that the difficulties in protecting such victims could not simply be overcome by passing legislation.

So, in November, two months after I moved my motion, I was told, as was reported in the Press, that the problems would not be solved simply by passing legislation. Four months went by when, much to my surprise, an article appeared in *The West Australian* which read—

> GOVERNMENT MAY ACT ON HOME VIOLENCE
>
> The WA Government may legislate to protect the victims of domestic violence.
>
> An advisory committee will be set up to consider possible amendments to the Family Court Act.

That article appeared on 16 March 1982, but we are yet to see any results from the committee appointed. As we are aware, the Bill does not relate to any recommendations of that committee. I would like to know why the committee has not submitted recommendations to the Attorney General.

The Minister indicated in his second reading speech that the Bill is based almost verbatim on one introduced in South Australia earlier this year. The South Australian legislation followed recommendations of a South Australian committee set up to consider problems associated with domestic violence. Why did we have to wait for legislation to be enacted in South Australia? Why did not this Government do the decent thing when I asked it to do so by way of the motion I moved? I asked it to provide urgent protection for victims of domestic violence. I wonder how many cases of that violence could have been prevented if stronger laws had been introduced earlier, and the 24-hour crisis care unit had been established to provide intervention and counselling. The Women's Health Care House has over the past few days conducted a phone-in on this issue, and some quite frightful cases have been reported.

I cannot understand why the Commonwealth Government has taken so long to pass amendments to the Family Law Act. Amending legislation was introduced in October 1981 to attach a power of arrest to injunctions issued by the Family Court of Australia. I cannot understand why that Bill still has not been passed by the Federal Parliament. A need exists for legislation applying not only to married people, but also to people in *de facto* relationships. The latter must rely on State laws for protection, but hopefully they will obtain some relief as a result of this Bill. It is most important that the police accept a greater obligation to act in cases of domestic violence. The South Australian committee pointed out in its report that—

> Despite the fact that domestic assaults have the same legal footing as assaults between unrelated people, in practice there is considerable disparity in treatment by police, judges and magistrates.
>
> Figures contained in a N.S.W. study show this disparity, in the same way as a study of

> cases of assault in Washington D.C. in 1967, which showed that, of cases involving unrelated individuals, 75 per cent resulted in arrest and court adjudication, compared to 16 per cent of reported cases of assault within the family. Significantly, the latter were charged on misdemeanours only and not as felonies.

The common complaint in this State, as the Hon. J. M. Berinson mentioned, is that our police are reluctant to interfere in domestic disputes. Hopefully this legislation will change that situation. Although it is too soon to have a clear picture of the results of the South Australian legislation, I understand that in addition to the action taken by South Australian police under the amended Justices Act in that State, the mere existence of the provision is having a salutory effect on potential offenders. Today I called a couple of South Australian members of Parliament to determine their views on the results of their legislation. I was told that although not many orders have been issued, the police have expressed the opinion—

The Hon. I. G. Medcalf: It has had a strong moral effect.

The Hon. LYLA ELLIOTT: That is correct; merely the threat that the police will use the provisions has had the desired effect of reducing domestic violence.

The Hon. P. H. Wells: That is a good use of the law.

The Hon. LYLA ELLIOTT: One of the good points of this legislation is that instead of women and children being forced to leave the family home to go to a refuge for safety and protection, while the person committing the violence and causing trouble is allowed to stay in the house, these women and children can remain in the house. The existing situation will be reversed under proposed new section 172(5). However, while the Bill gives some measure of relief in that regard, it is not a panacea.

I do not intend to go over all the ground I covered in 1981, but I do appeal to the Government to do a lot more than it has done. A need exists for a much more comprehensive brief to be given to the committee set up. As well, the committee must be expanded to include more community representatives such as people who come into constant contact with victims of domestic violence. The composition and terms of reference of our committee are limited. Our committee comprises a judge of the Family Court as chairman, and as members, the Registrar of the Family Court, a representative of the Family Law Practitioners Association, a senior inspector of police, the Deputy Director of the Department for Community Welfare, and a legal officer of the Crown Law Department. The terms of reference allow the committee to consider only ways in which the existing legislation may be amended to give more protection to people suffering from domestic violence.

The composition of the South Australian committee includes quite a number of community representatives. They are the types of people who should be included in our committee. The members of the South Australian committee were the women's adviser to the South Australian Premier, the Supervisor of the Crisis Care Unit of the Department for Community Welfare, two women from the Women's Shelter's Advisory Committee, an inspector of police, the Director of the Elizabeth Counselling Centre—the nominee of the South Australian Council of Social Services—a social worker from the Child Protection Unit of the Adelaide Children's Hospital, a female representative of the Attorney General's Department, a clinical psychologist from the St. Corantyn Clinic, and a representative from the Women's Adviser's Office of the Department of the Premier and Cabinet. That composition gives an idea of the types of people the South Australian Government felt were appropriate to be members of its committee, people in much closer contact with the problem than, I submit, some of the people on our committee.

A 12-member task force was established in NSW with the job of studying and making recommendations on not only the laws of that State relating to domestic violence that could be amended, but also ways in which improvements could be made in the health, welfare, legal and police services provided for victims of domestic violence. That task force was established in 1981, and after three months had listened to submissions from approximately 300 people working in the field of domestic violence. These people ranged from Family Court judges, magistrates, policemen, refuge workers, and social workers to women who had been victims of domestic violence. The committee received written submissions, and 451 responses from victims of domestic violence in answer to its questionnaire published in the *Sunday Telegraph*. The task force visited urban and rural refuges, and other crisis intervention services, as well as studying material from other States—particularly South Australia—and other countries—particularly the United States of America. An excellent report was brought down with 186 comprehensive recommendations.

One must compare the restrictive nature of the personnel and terms of reference of our committee with the personnel and terms of reference

of similar committees in other States. After that comparison one must admit that our committee leaves a lot to be desired.

I ask the Attorney General to review the matter with a view to broadening our inquiry into this serious issue. I am concerned about the need for the establishment of a 24-hour crisis unit and counselling and intervention service. I read a reference to the Government's intention in this regard which appeared recently in *The West Australian*, but I did not read that the Government is committed to introducing such a unit within a certain time. I would like to know whether the Attorney General can provide us with further information. It has been shown that a unit of this nature in South Australia is of great value.

When last year I moved the motion to which I have referred I went into a great deal of detail, but at this time I will not repeat that detail.

With those remarks, I support the Bill.

THE HON. I. G. PRATT (Lower West) [8.56 p.m.]: I support the Bill. I am glad it has come forward at this time; it is most necessary.

The Attorney General has told us that the Bill is an interim measure. We are awaiting the report of our committee of inquiry, which in turn is waiting for the consideration in the Federal Parliament of amendments to the Commonwealth Family Law Act.

It was a wise move on the part of the Government to look for legislation that was seen to be working in another situation, and to use that as trial legislation in this State. We are left with the option of amending the legislation at a later stage if we find that our committee recommends better ways of carrying out our intentions.

On many occasions in my province I have felt a need exists for this type of legislation. Unfortunately a great problem in gaining assistance for victims of domestic violence is that in many cases the victims are reluctant to do anything. They recognise the problems they have, but very often they feel they are tied to the domestic situation in which the violence occurs to such an extent that they cannot leave. If they find that they must leave the domestic situation, they may feel that they should not as a result of the security it may offer. Moral grounds may exist for not leaving, along with many other reasons. We will not solve by legislation the problems inherent in domestic violence, especially the problem of the people suffering not really wishing to do anything positive about the violence. In many cases if they are in a position to do something positive they do not do so.

Police officers have pointed out to me that they have been reluctant to involve themselves in what they call "domestics". Very often a heated domestic argument results in a complaint being laid, but the next day the complainant does not want to know anything about the complaint he or she made the night before.

That difficulty will remain with us. However, it does give relief to those people who are prepared to do something about their problem. I have had to deal with some horrible situations at various times. One that springs to mind concerned a woman with two children who was separated from her husband, who was serving time for violence. In the meantime, the woman met a caring young gentleman and they developed a *de facto* relationship. He cared very much for her children.

The husband was released from prison and went to the home, which was not the matrimonial home because it was rented, and threatened them with violence. The woman told the police about the threat she had received and they told her that as it was a domestic situation and her husband had done nothing to harm anyone, they could not do anything about it. The husband returned once more in a drunken state and threatened them again. The woman again saw the police and they advised her that they would have a police van drive past her house periodically to keep watch. The inevitable happened. In between the calls made by the police the husband arrived and took to the woman with a knife. He slashed her, and the person who was living with her had his hand severely slashed. Consequently, the husband was arrested and dealt with accordingly.

Anyone could have seen clearly that this sort of thing would happen. One of the things that appeals to me in this Bill is that if there is good reason to believe something will happen the police will have the ability to act. They do not have to say, "There is nothing we can do about it", as they have said in the past.

I know many police officers are concerned about this matter because they feel their hands are tied, but with the implementation of this Bill the situation will be rectified.

Another case which was brought to my notice the other day concerned a lady who was in her second marriage which, for reasons that I will not go into, did not work. The home they lived in belonged to her through a settlement from her first marriage. Unfortunately, she did not want her husband around any longer and asked him to leave. He refused. Together with her children she left the home. When the husband came home and found her and the children gone, he smashed the

contents of the house and rang her first husband, who was a policeman, and told him that if he found his wife he would kill her. The ex-husband found his ex-wife and told her not to go near the house because her husband had said he would kill her and he meant it. The woman and her ex-husband were convinced that if this man got hold of her she would be dead.

Again, this was a situation where the police were not interested in the violence or the smashing of the house because it was the matrimonial home. She was given police protection in order that she could obtain some of her belongings but her husband was away from the house at the time. Once this Bill is passed and becomes law the police will be able to deal with this sort of problem and people will not have to wait until someone has been killed before something is done.

I am glad the Attorney General has brought forward this Bill without waiting for the committee, to finish its deliberations. It is understandable that the committee is reluctant to make its decision, because of the amendments to the Family Law Act.

It will be interesting to see how effective this Bill will be once it becomes an Act. Like many other Acts that have been passed, we will find there will be a need to tidy certain sections of it. At least, this Bill is based on some sound experience. I will be pleased when it is passed so that when someone comes to me with that sort of problem I will be able to say that we can provide protection.

I support the Bill.

THE HON. W. M. PIESSE (Lower Central) [9.06 p.m.]: I support this legislation also, but with somewhat less hope of its effectiveness than previous speakers seem to have. I congratulate the Attorney General on bringing this legislation forward because it will do something against the problem of domestic violence.

Probably it will have some moral effect for a short time. Unfortunately, it is a known fact that a great many women will never bring forward accusations. People in this situation tend, from my experience, to live in the hope that the threat will go away and that they will be able to cope with it. Some women who have suffered so much will come forward at the next provocation, but unfortunately there are many whose problems will still be semi-hidden and I do not know how we can legislate to cover that situation.

Another problem I see with the legislation is the possibility of its abuse, and I suppose that goes for every piece of legislation that has ever been passed in this Chamber. I refer to proposed section 172(1)(b) which deals with the term "threatened to cause personal injury". How many times have we heard a person who perhaps has consumed too much alcohol say to someone else in the household, "If you do that again I will knock your head off"? We have all heard it at some time. Because the person is inebriated, one may not take into consideration that he could do something like that and the situation is left open to abuse or to cause some anxiety. I know of many instances also when these threats have been made to children. They are told what will happen if they do a certain thing again, or if they do not arrive home at the correct time.

I have not read in the legislation what are the proposed penalties.

The Hon. I. G. Pratt: Six months' imprisonment.

The Hon. W. M. PIESSE: Only in some instances, but an order may be made and it does not say exactly what the order might be. Perhaps the Attorney General could tell us when he replies what is envisaged in relation to the order against the person making the threat.

The 24-hour provision is a very good one because most domestic violence is, in fact, caused or threatened at a time when a person is in a particularly bad mood. If the person can be removed from that area of irritation for a cooling off period, later the wife or the *de facto* usually receives him with open arms and says, "I know you did not mean it." One must be careful when interfering with domestic matters of this kind.

I support the legislation, but it is another one of those pieces of legislation which will need to be reviewed and probably amended if it is to be effective. We must give it time to prove itself. As the Hon. Lyla Elliott has said, in South Australia where similar legislation has been introduced, the Government has not been prepared to say at this stage that it has or has not been effective. This is mainly for the reason that people will not bring forward problems until it is too late.

I support the legislation.

THE HON. P. H. WELLS (North Metropolitan) [9.11 p.m.]: This is probably the sort of legislation that should never be necessary in a society of people. It is a sad indictment on the type of society when it is found necessary to introduce legislation of this type. There would be no doubt in members' minds that many people are crying out for some sort of assistance in this community.

On 26 February 1980 the following statement was made in *The Bulletin*—

AUSTRALIANS murder members of their own families more than they murder strangers.

In NSW, for example, the most common form of murder is that of one spouse by another. At least 25 percent of all men who murder, murder their wives, and at least 40 percent of all women who murder, murder their husbands.

The Hon. R. J. L. Williams: For good reasons.

The Hon. P. H. WELLS: If members want to consider this matter properly, they should visit all the women's refuges in WA and listen to the situations in which those women have found themselves. In almost every case the spouse is at fault.

It is impossible for us to create legislation which says that people should respect one another. The reality is that people do not always respect one another. If we quibble about how quickly we could meet the needs, we would probably never get any legislation. I defy lawyers to say what we should be doing because last time I went to a family law conference it took those lawyers present one hour longer than anyone else to get their facts together.

The Hon. J. M. Berinson: Just more meticulous.

The Hon. P. H. WELLS: I have come into contact with many domestic violence situations, including *de facto* relationships. The proposed legislation includes all types of violence. I refer to a discussion paper on violence between spouses and quote as follows—

1. The incidence and severity of violence between spouses in Perth, W. Australia, is far greater than is generally recognized.
2. Violence between spouses will, for a variety of factors, increase rather than decrease in the years ahead.
3. At present a large proportion of calls for police assistance are related to violent domestic disputes.

The conclusion states—

Finally we would endorse the following conclusion reached by the Royal Commission on Human Relationships (Final Report; Vol. 4: 1977).

"As a result of our investigations we believe that family violence is an issue of major concern, calling for action by the government and the community."

Since that time, the Joint Select Committee into Family Law has brought forward a whole range of proposals, one of which almost covers the category mentioned by the Hon. Lyla Elliott. I refer members to page 5392 of *Hansard* of 10 November 1981, where the following appears—

Section 114 of the Family Law Act be amended to give a judge a discretion to attach a power of arrest to an order or injunction where the judge:

(i) makes an order or grants an injunction containing a provision relating to the personal protection of the applicant or a child of the marriage, or makes an exclusion order;
(ii) is satisfied that the other party to the marriage has caused actual bodily harm to the applicant or the child; and
(iii) considers that the other party is likely to do so again.

Both the Federal and State police should have the powers of arrest in cases where there is reasonable cause for suspecting a breach of the order or injunction by reason of violence or entry into the excluded premises or area. They should be required to bring the person so arrested before any judge or magistrate exercising jurisdiction under the Act within 24 hours and to seek the directions of the court as to the time and place at which the arrested person is to be brought before the court (para 6.22)

When we debated the Hon. Lyla Elliott's motion relating to domestic violence, that recommendation had been brought before the Federal Parliament to enable public discussion on the matter.

The Hon. Lyla Elliott: I moved my motion before that was introduced.

The Hon. P. H. WELLS: I am quite certain the Federal authorities did not wait until the Hon. Lyla Elliott had moved her motion; it was part of the report of the Select Committee into the matter, and it was reasonable we should wait to see what was to happen on the Federal scene.

In addition, the Government instructed the family advisory committee to examine this and a number of related issues. Unfortunately, it looks as though the Federal Government may take longer than anticipated to pass the measure. In fact, no-one knows what will happen when it gets to the Senate; knowing that House, the matter may be hived off for examination by a committee of the House.

The Hon. Lyla Elliott: At least the measure has been introduced.

The Hon. P. H. WELLS: One accepts the Government's good intentions in not waiting for

the Federal measure, but to take an initiative of its own and to have cognizance of a number of reports on the subject. Indeed, embodied in this legislation is a recommendation of the New South Wales task force and provisions of the United Kingdom domestic violence Act.

I note the measure has been accepted with reluctance. People are saying, "Will it work? Will they use it?" Clause 4 of the Bill contains the following—

> (2) A complaint under this section may be made by—
>
> (a) a police officer; or
>
> (b) a person against whom, or against whose property, the behaviour that forms the subject matter of the complaint was directed.

That appears to me to satisfy the requests of members. In the past, when the police have arrived at the scene of a domestic violence incident, and it is obvious the woman involved has had her nose broken, and has been bashed, very often they have walked away because of the limitations of the legislation and the cumbersome nature of the Act; or, they knew a non-molestation order would take too long to implement. However, under this legislation, the police officer may make the complaint, which places the onus of responsibility partly on the shoulders of the Police Force.

It would seem to me this Parliament is giving the Police Force a direction. We as a Parliament do not believe people in our society should be able to go around indiscriminately bashing other people.

One of the problems under the existing Act is that when an offence has been committed, the people assaulted are required to lay a charge. Studies have shown that by the next morning, 50 per cent of people assaulted have indicated they wish to withdraw charges. This legislation will provide the means by which these people may be protected. Once a person is in breach of a court order, action will commence.

Like the Hon. Lyla Elliott, I am not a lawyer; however, it seems to me that this legislation will provide an incentive to many of the women who reside in the refuges of this town, by providing them with protection under the law.

It is true the Federal legislation may prove to be better than ours; I do not know. The Family Court may be a more appropriate body to consider these matters; I do not argue that point.

The Hon. Robert Hetherington: We have the State Family Court.

The Hon. P. H. WELLS: Yes, we have a responsibility in that area. I am not quite certain as to whether the family or the civil court would be the more appropriate body, but at least we will provide women with some means of protection.

The South Australian "Report and Recommendations on Law Reform" compiled in November 1981 by the Women's Adviser's Office, Department of the Premier and Cabinet, South Australia, under the heading, "Background" has this to say—

> In the words of the Chief Justice: "Personal happiness and well being are likely to be gravely impaired if a person has to live in fear of violent harrassment. It is of the utmost importance that the law provide a simple and effective deterrent against threatened violence".

Those comments were made in a judgment handed down on 26 February 1981 in the case of Parry *v.* Cook in the Full Court of the Supreme Court of South Australia. I believe this legislation attacks the area of concern expressed by the Hon. Lyla Elliott; we all know it is an area in which she has a clear interest.

The timing of these matters could well cause argument. However, I could refer back to a previous Labor Government which started to examine a couple of these reports and say, "You took two years to bring this in. What were you doing?" The reality of the situation, of course, is the lack of time. Sometimes when I see the number of matters which come across my desk, I wish I had more time to take action, because there are not enough hours in each day or enough people or enough money to enable us to do our jobs properly.

The Government has taken action to protect women who are on the receiving end of brutal attacks by people who disrespect their rights. This legislation recognises these people have rights, too.

The legality of this measure may be questioned. We could say, "There is a chance a person may be wrongly charged." I wonder if these people ever think about the thousands of people in the community who have never been charged and are never likely to be charged. I am quite certain that if the provisions of this legislation are too harsh, we will hear about it, because our telephones will start to ring. Occasionally, I am contacted by some disgruntled person who believes the law has been a little too harsh; however, I have found on investigating those cases that in most instances, the law has been applied with good, just cause. I have a great faith in our judicial system and in

the considered and reflective approach of our judges. This legislation will be implemented through the judicial system in a fair and proper way and will provide protection to a vulnerable section of our community.

When talking to the Hon. Lyla Elliott's motion, I suggested that people who were about to be married—indeed, it need not be restricted to married couples, considering the number of *de facto* relationships in the community today—should be given a pamphlet stating their rights. It might encourage people to treat one another with respect. Some people regard marriage as a contract which cannot be broken, and they treat their partners accordingly; these people are in for a rude awakening.

I am reminded of the story told to me by one of the staff at a women's refuge of a gentleman from a country where exclusive control over one's wife was an accepted way of life, coming to Australia and demanding to see his wife who had fled to the refuge, and threatening to invoke the law if he was denied access to her. He regarded her as his property, to do with as he saw fit. I am reminded also of barbaric legislation of the past which provided that a person could whip his spouse with a birch.

The Hon. Robert Hetherington: No thicker than one's thumb.

The Hon. P. H. WELLS: Some people have the misconception that the day they get married they are entitled to demand anything of their spouse and have total rights over them, and can be brutal if they so desire. I trust this legislation will be given some publicity, which will be enough to deter some of these people from their brutal habits.

Unfortunately, every now and then in our community we see the result of uncontrolled brutality. Recently in New South Wales it resulted in brutal murders. We say, "It cannot happen in Western Australia"; but I suggest that often it is happening in the house next door, or the house two doors down.

There is no point in worrying about what suburb is involved because, in my experience as a Salvation Army officer, it is found at every level of the community; and people do not know how to get out of the situation. We have a responsibility to provide not necessarily for the means to get out, but to say to those who want to strike out that they must respect their spouses.

This is responsible legislation; it gives rights to the people in the community who need protection. I support the Bill.

THE HON. ROBERT HETHERINGTON (East Metropolitan) [9.31 p.m.]: After the Hon. Peter Wells has sat down when he has been supporting a Bill, I feel that I am rather sour, misanthropic, and churlish when I rise because I find faults.

The Bill the Attorney has brought down attempts to lessen domestic violence. I do not think he expects it will stop domestic violence. It seems a little nasty to look on the other side, but never mind, I will not be perturbed about that. While supporting the Bill, I intend to deal with some of the reservations I have about it.

I was interested to look at the debate we had last year on the subject of domestic violence. The Hon. Margaret McAleer moved an amendment to the Hon. Lyla Elliott's motion; and that amendment can be found on page 5378 of volume 5 of the 1981 *Hansard*. I will read it out because I want to use this more or less as a starting point for some of the things I want to say. The Hon. Margaret McAleer moved that all words after the word "that" be deleted, and that the following be substituted—

> (1) recognises the problems of victims of domestic violence and that the difficulties associated with proposals for their protection cannot simply be overcome by the passage of legislation;
>
> (2) believes that, in any event, it would be inappropriate to contemplate State legislation before the Commonwealth Parliament has considered amendments to the Family Law Act at present before the Parliament which will give greater protection to family members in situations involving domestic violence;
>
> (3) supports the State Government's continuing studies with a view to a crisis care centre being set up; and
>
> (4) commends the Government for its action in increasing the funding of women's refuges in its current Budget by an amount which together with an additional Commonwealth contribution will be more than 20 per cent in excess of the actual expenditure in the last financial year.

I am glad the Government has changed its mind slightly since last year. I agreed with some of the comments the honourable lady made in her amendment; but I preferred the motion. I point out that the amendment provided that the problems of victims of domestic violence cannot be overcome simply by the passage of legislation, and it supported the State Government's continuing

studies with a view to a crisis care centre being established.

Last year I was quite excited at the reports that the Government was seeking to establish a crisis care centre, in an attempt to solve some of the problems of violence in our community. I asked when it was likely to happen, and I was told, "When the Budget will allow it." I had hoped that this year's Budget would allow it; but I do not know if it will. It is one of the initiatives of the present Minister for Police and Prisons which is to be commended highly and it is one that should be carried out.

In my speeches on the amendment and on the motion last year, I pointed out that at the Western Australian Institute of Technology a family violence centre had been set up mainly for males. The administrators of the centre found—to their surprise, and certainly to mine—that the males concerned with violence against their families did not want to be violent; and they went along and were counselled. Some of them seemed to be on the way to overcoming the problem. Unfortunately, the person who set up the centre went back to America, and the experiment folded up. That is a pity.

I suggest that the Government might continue such experiments and one day, I hope, set up a violence centre. In the meantime, I accept the Attorney's argument—I would have accepted it last year had it been put up—that although various things are going on, perhaps we need interim legislation, which certainly will not solve the problem, but which might help. Therefore, I applaud the Bill from that point of view.

My worries about the Bill are not the worries of the Hon. Win Piesse about what kind of orders may be made, because the kind of orders that may be made under this legislation are quite obvious. They are the kind of orders that can be made now by the Family Court in relation to married couples. The Family Court can order people to keep the peace towards each other; it can order one of the partners of a marriage to move out of the family house for a specified time, it can order them to behave in a certain way; it can order them to keep away from each other; and it can order almost anything which, in its view and in its discretion, is in the best interests of peace and good order. Sometimes, of course, the Family Court has too much absolute discretion; a court with that kind of discretion should not follow the normal British practice of the adversary system but should become an inquisitorial court. We will argue that at some other time; but I like to put it in every time I have the opportunity, because it is important.

One of the things that worries me was raised by the Attorney in his speech when he said, as recorded on page 3843 of *Hansard* of 14 October 1982—

> The legislation will apply generally to all domestic violence—even to violence which may not strictly be classed as domestic—and is not limited to violence between spouses.

This is true. Some people would say—and I have had a learned lawyer tell me this—that the proposed new section 172(1)(c)(i), which is to be found on page 2 of the Bill, provides that where justices are satisfied on the balance of probabilities that the defendant has behaved in a provocative or offensive manner, they may make certain orders. This gives a very wide power—a power that is wider than proper for the intention of the Bill.

Perhaps it shows Labor Party paranoia; but it was put to me that a person who behaves provocatively in some kind of street demonstration and then has the intention of behaving in such a way again, might be brought in under this proposed new section. I know, of course, that it is not the intention of the Attorney that this should happen and he may be able to convince me that the words of the Bill do not allow that; but other eminent lawyers have expressed views on this matter. I mention it because I believe it should be mentioned. One should always mention these kinds of things in the Parliament to show that some of us will be watching very carefully the way the Bill is put into effect, to make sure that this does not happen, and to make sure that if the Bill is abused, an outcry will occur.

The role of the Parliament and of parliamentarians is one of scrutiny of the Executive, and one of checks and balances. I know the Attorney would accept that, even if he thinks that sometimes I may be a little over-zealous in trying to carry out that role. We must do our best, and as I said by way of interjection to the Hon. Peter Wells, that is life—*c'est la vie*—and we have to put up with that sort of thing. I do not really care for this provision; it should be looked at very carefully.

The question of the forum is one that raises problems because it means that some people will have the choice of two forums: the Family Court and the Court of Petty Sessions. I do not want to enter into legal arguments here; but the people who have put legal arguments before me I have found to be very persuasive. However, it seems to me we could be in the position, particularly in the case of married people, that one partner could apply to the Family Court, and one could apply to

the Court of Petty Sessions. I am not sure what would happen. We will find out when it does happen; but that might be a bad thing.

Another matter of concern to me is the 24-hour arrest provision. A police officer can have reasonable cause to suspect that a person has committed an offence under subsection (1) of proposed new section 173, and that person could be kept no longer than 24 hours. That appears to be fine until one reads what "24 hours" means in the parent Act. It excludes Saturdays, Sundays, and public holidays. If somebody, in an excess of zeal, breaches an order or is alleged to breach an order, or a policeman suspects reasonably that he has breached an order, but it later turns out that he has not breached the order, and that happens on a Friday before a public holiday, that person could be incarcerated from Friday to Tuesday. This is a little excessive. I believe that we should roster magistrates for seven-day courts. However, I guess that is a little ahead of what is likely to happen within the foreseeable future; but it would be desirable.

Another problem is the one that was raised by the Hon. Joe Berinson—I think he raised all of the problems I have mentioned—relating to the fact that an *ex parte* order may be made. Even now, under the family law, an *ex parte* order can be made that one party be ordered out of the home or lose custody of the children, and it has been argued to me that that could mean some kind of disadvantage. Certainly it means that an order could be made, and we know that our magistrates can make mistakes; but the person concerned could have to wait for six weeks before he was in a position to have the order rescinded or changed. That too is a cause for concern.

The thing I think is good about the Bill—and I am prepared to take the risks because they are in the Bill—is that it does enable an order to be made for a violent partner to be ordered out of the family home. Even if we looked at this merely from the point of view of Government revenue, this would be useful because it would stop the pressure on refuges, but of course I am not looking at it from that point of view. It means a partner—of course it is not only women but it is mainly women who suffer violence; some men do as well and want to escape with their children—who is living under intolerable violence and threats of violence now will not have to flee the family home but will be able to get an order restraining the violent partner and keep him outside the family home. This means the non-violent partner and her children—I will use "her" as the generic term—will be able to live in the family home; that is, if she is still not afraid of the partner who is to be put under the restraining order.

I presume the six months' prison sentence for a person who breaches an order is in the Bill because it is realised that at times a person who is not prepared to obey an order must be got out of the way because he is dangerous. I still would agree with Mr Berinson that six months' imprisonment as the only option does not seem proper.

The Hon. I. G. Medcalf: That is the maximum. It does not mean they have to get six months.

The Hon. ROBERT HETHERINGTON: I realise that, but we should have the option of a fine with a certain maximum or six months' imprisonment. I would not like to see the option of imprisonment removed; I believe a person who is violent and who breaches an order not to carry out violence towards his partner must be put away. I do not know what we are then to do with him, and this worries me.

I do not think putting a violent partner in prison solves the problem, because he is likely to be violent when he gets out again. Therefore it is important we have crisis centres and violence referral centres so that we can offer some kind of treatment and remediation. I know that in our prisons some social workers are doing a good job. I attended a seminar recently at which one social worker presented evidence that she had broken through with rapists who before had never shown any remorse. It seemed possible there could be a cure in the sense that people who had previously shown no remorse for what they had done, because they could not see it was wrong in one sense, were beginning to see it was because of the techniques she had used. This is good but we need more of it.

Therefore this legislation should be regarded as a temporary expedient, a temporary stopgap, until we can do something wider and better. I would hate to think it was anything but a temporary measure. I gather from the Attorney's speech that it is not his intention that the Bill be any more than that and that he is waiting for the report of the committee before further action is taken. I hope that if he cannot assure me the crisis centre—which the Government has been looking at for some time—will be set up this financial year, he can assure me he will work on his Cabinet colleagues and encourage them to do something about it.

Another provision is a two-edged sword—and a lawyer I spoke to was worried about this because he believed the right of policemen to make a complaint should be a strictly limited right. On the

other hand I think this is one of the good things in the Bill, even if there should be more safeguards put around it—I am not sure if it can be done but it might be possible.

One of the problems is that a distraught, battered woman is often not in a fit condition, physically or mentally, to make a complaint. As the Hon. Peter Wells pointed out, quite often if the police charge a man they find next day that the wife is not prepared to carry on with the complaint. Sometimes she is not prepared to carry on with the charge because she does not want her partner to be charged with assault.

However, if a policeman can act on his own initiative and can go before the court and ask for an order restraining the partner concerned from behaving in that way in future, this provides a possible way out and allows the police to take a useful and positive action. I can see the possibility that with the power as it stands an overzealous policeman may go too far, and this is something we will have to look at very carefully as we have to do with all new laws. Although I see the dangers in this I would not be prepared to vote against the relevant clause because it seems to me it allows the police to intervene in a useful and positive way without charging the person with assault and without having to intervene in a way that will create resentment against the Police Force. It will allow the police to bring an offender before a court and have an order made which will put that person in jeopardy of committing an imprisonable fault if he does it again but without being subject to any immediate gaol sentence or fine that might upset the family arrangements.

This provision will allow the police to act without destroying the possibility of some reconciliation which at times will be possible. Although I know very little personally of domestic violence I have spoken with a number of people who know a great deal about it and it seems that in most cases of violence there is not a great deal of hope for reconciliation until some kind of restraint has been imposed and until some kind of counselling and treatment are offered to the violent partner.

One of the things that appears from the literature on violence is that it tends to be a family pattern; violent parents seem to breed violent children. I do not mean they breed them in a way that if the children were adopted by non-violent parents they would still grow to be violent parents themselves. They are taught violence by model and example and they act out the model they were brought up with. It is true that legislation by itself will not stop this; it is true also that legislation may call a halt at a given moment to the ghastly round of violence, the cyclical round of violence, that is quite often the pattern in violent homes. Sometimes it is Saturday night drunkenness, with a husband bashing and raping his wife; that is not unusual. This shows two things: Some people have violent models and cannot relate to people sexually, and they cannot respect people, they cannot respect each other as full and whole people.

To break down these patterns would involve a fairly basic change in our society. Nevertheless legislation such as this may stop the cycle and therefore be helpful as long as we add to it other things which Governments and other agencies can do, and as long as we do not think by putting an order on someone and putting people into gaol we will automatically stop them being violent. Quite often by putting people in gaol we prove that the bigger battalions have the most strength and we teach them that violence is the way to do things if they are in a position of power and superiority.

Although my support for the Bill is qualified by the doubts I have expressed, in general I cannot bring myself to vote against it, because it does provide the possibility of some proper annd positive action. I welcome the Bill in so far as it does that. I am worried about the whole question of the forum; I am worried about new section 172(1)(c). Sooner or later we must decide which forum we will use, whether it is the Family Court or another. I suppose it will be that court. I do not think we can have two forums to which people can appeal.

I do not oppose the Bill and I welcome some of its provisions.

THE HON. I. G. MEDCALF (Metropolitan—Attorney General) [9.57 p.m.]: I thank honourable members for their support of this Bill. Every member who spoke on the Bill did for one reason or another support it. Various reservations and doubts were expressed by some members, but it is a fact that every member has indicated his or her support for the legislation.

I can well understand the doubts. I suppose that when a Government, whatever Government it may be, whether Federal or State and whatever its political colour, is contemplating legislation of a rather radical or new type, it has to accept that reservations will be expressed. Naturally and necessarily people will have their reservations because for one thing they are not used to the sorts of things which come in new legislation and, for another, people are naturally conservative. This natural conservatism may not have much relevance, but it seems to arise in people in every walk of life and of whatever political party.

I really had anticipated there would be a good deal of opposition from members opposite and I say this without any malice. Indeed, as the Hon. Joe Berinson said, had the Hon. Peter Dowding been here undoubtedly he would have put forward strong views about the Family Court, in which jurisdiction he used to practise. He would clearly have put forward quite a lot of views. I am well aware of that because Mr Dowding, before he became a member of Parliament, made quite a contribution to family law. In fact, it was following some discussion which took place at a law summer school where Mr Dowding was one of the speakers on family law that I decided we would endeavour to make certain changes in our Family Court Act. Indeed, some of the changes that were made, which Mr Dowding must have realised at the time, did result from some of the comments he then made.

I have not noticed since he has been in the House that he has had any significant effect on Government legislation. It may be there is some other reason which escapes me at the moment. Had he been here, he would have been on the wrong track had he put forward the argument we have heard tonight that the Family court should be handling this matter and not the Court of Petty Sessions.

I say that advisedly because the Family Court is a court of conciliation and mediation. My authority for that is none other than Chief Justice Evatt who has said on a number of occasions, especially when she has had to mete out some punishment for contempt of court, that it is a court of conciliation and mediation. That was the aim and objective of the Family Court.

Before one thrusts upon it criminal or quasi-criminal tasks, one should bear in mind the real function of the Family Court. Another very good reason that the Family Court should not be nominated as the forum or place where the trial should be held is that the Family Court deals with married people only.

The Federal Government is empowered to deal only with people who are in a state of marital relationship. That is made quite clear in section 114 of the Family Law Act. The effect of an injunction to restrain people from entering premises can only operate in relation to married persons who are in a state of marital relationship. Other situations occur in domestic and home situations where, people are not always in a state of married relationship. Where children are involved, perhaps they are not the children of the marriage and other people could be involved, parents who try to intervene, friends and others.

The Hon. Robert Hetherington: Would it not be possible to give the State Family Law Court such powers?

The Hon. I. G. MEDCALF: It would be if the Federal Government were able to do so constitutionally throughout Australia. It would be if the Federal Government, being able to do so, were so minded, and it would be if the decision were made to make the Family Court an all-embracing court which dealt with not only civil issues between parties, but also criminal issues. That could be done. However, we live in a real world.

I have mentioned the difficulties on previous occasions when Governments have discussed the question of handing over powers or making a reference of power, the difficulties which exist in relation to property law in the Family Court and the affiliation proceedings.

This subject was under discussion at a conference of Attorneys General in Melbourne when Mr Ellicott was the Federal Attorney General. The question of referring power arose and I said there was no need for us to refer power because we already had given powers to the Family Court.

The Hon. J. M. Berinson: Isn't that the answer to your earlier question?

The Hon. I. G. MEDCALF: New South Wales and Victoria proceeded to argue about it. I walked back with Mr Ellicott to his office and he said it would be at least two years before this reference of power could be achieved. That was about five years ago, and still it is not any closer. If it is I am surprised.

We live in a real world and if we were to wait for all of these things to happen—a change in the constitutional arrangements in Australia in relation to this area of the law—to overcome all the problems that must be overcome, it could take many years.

We must bear in mind that in the past members in the Federal Parliament had a free vote on these issues. Senators had a free vote when the Family Law Act was before them.

The Hon. Robert Hetherington: Have I been advised incorrectly when it was suggested to me that we could invest the State Family Court with the powers I have suggested?

The Hon. I. G. MEDCALF: If we were prepared to change the nature of the Family Court, and if we were able to persuade the Family Court that it should have this power, and with all sorts of other qualifications, we could probably do something about it. However, what about the other cases that are not embraced in this legislation? There are real problems. We have invested

the Family Court with jurisdiction over property and affiliation matters. We still retain property law in the other courts and the general law of property will apply to people who are not involved in family proceedings.

There is a large overlap and it is quite wrong to say that this all should be put into the Family Law Court in that simple way. One could write a thesis on this and prove that the whole direction of the Family Court should be changed. I am prepared to entertain that possibility, but it is really a matter of theory at this stage.

Until one makes that decision, one has to legislate for practicalities. If we were to say that this will apply in the Family Law Court, we would need another law for all the other people who are outside it.

There has always been a law in relation to keeping the peace, and it is very much the same as the one we are changing, except we are putting some refinements into it. We are trying to make it more acceptable and accessible to all and sundry, and we are trying to involve the police who have never been involved before.

Although we have a Family Court, we still have the Justices Act, part VII which relates to the keeping of the peace. It is centuries old and out of date, but nevertheless it is used occasionally when someone is bound over to keep the peace.

We have been criticised by the writer quoted by Mr Berinson. That criticism came from the Law Society, but it was only a draft. I think it was written by one person, although I may be wrong. It was written by a family lawyer who did not know the extent of the situation outside the Family Law Court. We still have to deal with all these other cases.

There is strong argument to say that at this stage in our history we should not be placing all this matter in the Family Law Court. If Judge Anderson's committee says that aspects of this could be put into the family law, then that is another matter. This legislation is an interim measure.

The Hon. Lyla Elliott asked why we had not done this earlier. She was the urger on this matter. We have been taking gradual steps in this direction and we have two registrars of the Family Court who are magistrates. Theoretically they can exercise these powers, but in practice they do not. It is not the policy of the Family Court to enter into this area. If Judge Anderson and his committee come forward with some changes or bright ideas, we will look at the matter to see whether there should be some further modifications. I made that clear in my second reading speech, and I make it clear again now.

I have never regarded this legislation as being anything other than a stopgap measure. We did not do this sooner because we did not have a model when the Hon. Lyla Elliott moved her motion. The South Australian model has come into force since then.

The Hon. Robert Hetherington: What was their model?

The Hon. Lyla Elliott: Why could we not have been in the vanguard instead of the rearguard?

The Hon. I. G. MEDCALF: South Australia got in ahead of us and did a good job. I have read the report to which the Hon. Lyla Elliott referred and we are acting on the basis of the report which was made by a distinguished committee from South Australia. We have had the advantage of the work of that committee and have studied the resulting legislation and seen how easily it can be adapted to our own system.

From the reports I have received from legal and social welfare quarters in South Australia, the legislation is working satisfactorily. However, South Australia has not had a large number of cases. The South Australian Government believes it has imposed a strong moral effect on the community. I hope it will do the same in this State.

Governments can never be absolutely right in these areas, but we knew that something had to be done about domestic violence. We could not leave it. We all know that Parliament will not sit early next year and that is the reason that this legislation has been brought in now.

We have received criticism from the writer for the Law Society who says that some action should be taken on domestic violence, but we should wait for the Anderson committee report. If we were to wait for that committee which is awaiting the Federal amendments—I read in this morning's paper it is not sure whether the House of Representatives will meet next week—I do not know how long we would have to wait for the legislation.

In 1981 the Commonwealth introduced some amendments to the Family Law Act which followed from a comprehensive report by the parliamentary committee of inquiry which travelled around Australia. I gave evidence before it when it was in Perth, as did other people.

The Commonwealth Government has provided for a power of arrest to be attached to section 114, but it differs from the power of arrest that we have in that it is not an offence to breach the non-molestation order. There will be a power of

arrest, but the wife cannot invoke that until she has taken further proceedings for contempt—she has to bring further proceedings in the Family Court. This has been criticised by several judges whom I will not name. The Commonwealth proposal already has been severely criticised as being "unpractical". The person arrested will be in a most difficult situation, and the wife must bring further proceedings.

That does not look very hopeful to us, and if the Commonwealth Government eventually legislates for that the Anderson committee can then consider that matter and make some refinements. At least we have given a lead to the Anderson committee so that it may look at what we are doing. I have discussed this matter with Judge Anderson who said that he has no objection to our proceeding with our legislation and that in due course we will receive his final report.

I told him that I was sure the Government would consider the final report. That is the first thing to be said about this report of the Law Society. It is not practical in the sense that it is saying to us, "Hold everything up, do not proceed until the Anderson committee has completed its work." The Law Society report says—

> We urge the speedy revision of procedures in the Family Law Act 1975, Family Court Act 1975-1982 and the Justices Act which will provide uniformity in approach and one forum to deal with the question of domestic violence rather than the conflict of jurisdiction which we fear will inevitably occur if this legislation is passed.

If we wait for that, and although the society asked for speedy revision, we know what it means in practice; legislation will not be possible this year. The society criticises us for proceeding before the Anderson committee has completed its report. I believe I have given sufficient reasons to demonstrate that we cannot wait for the Anderson committee report. That is no reflection on the Anderson committee. I will reply to the Law Society—I have only just received this document. It is unfortunate that I cannot delay the Bill, but members know the reason. The Law Society has asked me to defer it and I would like to say, "Certainly" and sit down and have a talk. But I think the circumstances are such that we would be failing in our duty to the public if we held up the Bill at this stage.

The Law Society report is critical of the fact that this Bill will extend to other people, such as neighbours. I am told that in South Australia it is regarded as a considerable advantage when it has been used by neighbours in violent situations. We were criticised also for using the police. That is inevitable. This is a radical move, and one that will need quite a considerable amount of careful discussion with the police. I am sure they will respond in a proper way.

The Law Society report is saying that criminal assault should be dealt with in the Family Court. It is a court of conciliation, and I have always believed that it should be. The Law Society also says stipendiary magistrates do not have sufficient experience or discretion in matters of this kind. I cannot accept that. Stipendiary magistrates deal every day with cases of assault and they have more experience in these matters than any other adjudicators in the community. They handle more cases than anyone else, and they know far more about the matter than the Family Court judges, and I intend no disrespect to the judges. The orders to be made are for the protection of the victims of violence.

We have decided this is a social problem which requires legislation. We have accepted this argument; it requires some action. It is not easy to legislate. We said that 12 months ago, and it is no easier to do so now than it was then. It is important to remember that we are trying to extend this protection not only to married persons under the Family Law Act, but also to all persons in the community who may suffer in this kind of situation from threats of violence which may lead to a breach of the peace. I am sure no-one who has advocated this should go to the Family Court would want us to exclude married persons so they could be dealt with separately in the Family Court. It would not be sensible.

The Law Society says—

> We are concerned both at the possible clash of jurisdiction already adverted to, with a possibility of an unsuccessful party in one forum seeking the same redress in another, and at the Court of Petty Sessions dealing with matters which have hither to been the exclusive province of the Family Court.

These matters were not the exclusive province of the Family Court. That statement is patently wrong. The Family Court has never had the power to deal with this kind of situation, but only with limited orders under section 114 which may be loosely called non-molestation orders. That court relates only to married persons, or persons in a maritial relationship. It does not apply to others who are not married, or to the host of people affected by domestic violence. It is not correct to say this has been the exclusive province of the Family Court. That statement shows a lamentable ignorance of the system which has op-

erated for centuries whereby justices had the power to make an order binding people over to keep the peace. I do not believe it would be profitable for me to go into that statement in any greater depth. However, I will write to the Law Society and give it my views on various matters it had raised.

I hope I have dealt sufficiently with the reasons we do not believe it would be at all sensible at this stage in our history to legislate to put these proceedings into the Family Court. I hope I have made it clear; if the Anderson committee comes up with the recommendation that aspects of this could be looked at in a slightly different way, or that something could be hived off, we are prepared to look at it, and I am certain the Government would accept its responsibilities in that connection.

I want to say something about how easy it is to pick holes in this kind of legislation. It is easy for lawyers to do that, and I am not in any respect being critical of Mr Berinson. It would be easy for me to pick holes in this Bill. It is simple to say, "What is this about the balance of probabilities? Why don't you include 'beyond reasonable doubt'?" We have not done that because legislation has worked satisfactorily in South Australia and we believe we should take the plunge and do it here. If we put in the words "beyond reasonable doubt" it would make it more difficult to prove. In a sense, we are taking the boot off the assailant's foot and perhaps putting a slipper on the victim's foot.

The Hon. J. M. Berinson: What is the general standard under part VII of the Act?

The Hon. I. G. MEDCALF: It is the usual standard in criminal cases and that is one of the reasons they can never use it. We are trying to do something for the victim; we are changing things. I know conservative people do not like change and we are making a dint in some of these well-held legal shibboleths. We believe it is time we did something. I could also comment about an *ex parte* order.

The Hon. J. M. Berinson: That is probably the most serious question.

The Hon. I. G. MEDCALF: Let us look at that. Do we have to wait in all cases until the man is served? One cannot always get him; he is not necessarily living in the premises.

The Hon. J. M. Berinson: I did not suggest that. I asked for reasons why it should not be so.

The Hon. I. G. MEDCALF: Sometimes one has to get an order *ex parte* and they are made under the Family Law Act.

The Hon. J. M. Berinson: You have to give reasons.

The Hon. I. G. MEDCALF: Yes, and it takes weeks to get one. We are trying to do something to provide a speedy method. It must not be forgotten that if the man is not served with the summons, and if an order is made in his absence under subsection (3), it is only an interlocutory order and it has to be confirmed by the court after the court has heard the proceedings.

Other questions were raised. Why is it that one can get an order so quickly for the victim—within a day or two—but it takes a longer time to revoke it? Perhaps we could do something about that, but to a certain extent, the urgency has gone out of the matter when it is a question of revocation. The urgency arises when a woman has been victimised and one needs to give her speedy relief. If we made her wait six weeks we would be back where we were before.

The Hon. J. M. Berinson: We were suggesting the opposite.

The Hon. I. G. MEDCALF: Alternatively, if we were to say the order could be revoked just as quickly, there might be some way of doing that. The only reason Mr Berinson is suggesting we have to wait six weeks is because the clerk said we have to wait six weeks. What if we did it administratively? It is not in the planned laws.

The Hon. J. M. Berinson: I made that point as well. It is an adminstrative question only.

The Hon. I. G. MEDCALF: The Hon. Joe Berinson referred to the question of bail and what would happen if the man was arrested and was to be imprisoned on a 24-hour basis for a breach of the order. This legislation says he shall be brought before the court as soon as practicable. That is exactly what the bail legislation says. He has to be offered bail as soon as practicable—I think those are the words which are used in the Bail Act. He has to be given the opportunity of bail straightaway. He will be eligible for bail; he has committed an offence because he has breached an order; therefore, he is eligible.

The Hon. Lyla Elliott looks apprehensive and well she might, because I was apprehensive when I worked it out and thought, "What is the good if the woman is victimised and an order is made; the husband breaches the order and belts her up, and is put in prison, and immediately he is given bail, goes home, and belts her up again?" One of the criteria in the Bail Act which is laid down clearly is that one of the matters which must be taken into account by the justices who are granting bail is the safety of and any likely danger to any person who may be victimised by the defendant.

There is no question that this is one of the most relevant matters and a guideline for the court before granting bail. The defendant would have little chance of getting bail if he were likely again to attack the victim before the case came up in the normal way. So we have covered that point as well.

I do not believe I should attempt to refer to all the points honourable members have raised. Some very valuable contributions were made to the debate; I think I have answered the main points. Several members, the Hon. I. G. Pratt, the Hon. Win Piesse, the Hon. Peter Wells and the Hon. Robert Hetherington, made observations of a general nature in a different way which indicated their concern for the victim in relation to what the victim was to do. Was the victim acting rightly if she put her husband in? What would happen to her if she made a complaint?

The Hon. Win Piesse made this point very strongly as did other members. Of course, that is an intransigent and personal problem and I could not offer any solution to it. It is a frightfully difficult problem for the woman concerned. All we are doing is offering a legal redress for those who are so minded to use it and I hope they will obtain advice. I hope counselling services, crisis centres, and the like will be provided to assist and advise such people. I am sure the Government will make an effort to ensure those services are made available, because clearly it is a very difficult decision for a woman to make. It must be remembered that it is women who are most affected as 95 per cent of these cases involve women. A few men are bashed up by their wives, but mainly they are bashed up by neighbours, brothers-in-law, and the like. By and large it is the woman who is in this position and she has a very difficult decision to make.

Does the woman complain about this man and perhaps ruin the chances of being able to resolve their problems? She has to think about that. She may complain, but the really significant time comes when she has to make a further complaint, because a breach of the undertaking has occurred. Counselling services and advice will be required and we have to think about that.

The Hon. Lyla Elliott: Does the Government in fact intend to establish something of that nature?

The Hon. I. G. MEDCALF: I am not able to comment on that. I do not have that information. However, I believe counselling services will be necessary. The information requested by the honourable member can be obtained from some other quarter, but it is not within my portfolio.

The Hon. Lyla Elliott: What about the other question I asked you? Would you be prepared to look at broadening the personnel and terms of reference of the committee?

The Hon. I. G. MEDCALF: The answer to the question as to whether the personnel and terms of reference of the committee should be broadened will become apparent after the legislation has been passed and when we see what the Commonwealth intends to do, if in fact it does anything. If the Commonwealth decides not to take action in this regard for a long time, it may be wise to forget it. The committee was set up to produce some immediate results and it has been held up through no fault of its own. If this continues, the same reason for restricting its personnel may not exist. That is all I can say at the moment, but I am certainly prepared to look at it again.

Questions were raised as to why a fine is not included and why we restricted the penalty to imprisonment. It is clear a firm sanction must apply. If a fine can be imposed we let off the people who have some money. All they do is pay their couple of hundred dollars and go back and bash up their wives again. Going to prison is probably worse for a man who has money and assets behind him than it may be for other people who are not so well off.

The Hon. J. M. Berinson: That is true of almost every offence.

The Hon. I. G. MEDCALF: This is a rather serious offence, as the honourable member said. Alternatives are available, but we have not provided a fine. If it transpires that the imposition of a fine may be a desirable option, that can be dealt with in the future.

The Hon. Robert Hetherington: That will depend on the magistrates and the courts. Some defendants may be better fined and some may be better sent to prison.

The Hon. I. G. MEDCALF: Another question with which I should deal was raised by Mr Hetherington. He said he was afraid this might be used in industrial matters; I believe that was the implication of his comments and he based them on the fact that all one had to do was threaten somebody and the police might move in. In fact, that is not really all one has to do.

Three requirements are contained in that provision to the effect that the justices must be satisfied on the balance of probabilities that "the defendant has behaved in a provocative or offensive manner; the behaviour is such as is likely to lead to a breach of the peace; and the defendant is, unless restrained, likely again to behave in the same or a similar manner". That is a different matter

altogether and I do not really believe that is the kind of situation which calls for this sort of order. I do not believe this kind of order is appropriate for the sort of situation referred to by the honourable member.

In any event, anyone who says we should not include threats—the Law Society said this—should be directed to the existing provisions of part VII of the Justices Act which particularly refers to threatening situations and fears as to what somebody might be about to do. Therefore, we are not really changing the substance of the law in that respect.

Finally, Mr Hetherington raised a question in relation to the provision that an offender must be brought before justices within 24 hours. In fact somebody would be rather unfortunate if he were put inside on the Friday night before the Australia Day long weekend. We do have courts on Saturdays and it is not unknown for them to be held on public holidays; it depends on the requirements. In fact Saturday courts still apply, so that is just a precaution, because the position varies between districts. However, we can look at that measure and make alternative arrangements if necessary as time goes on.

I hope this Bill will be successful. It will act as a deterrent to people and will have a moral effect. In a sense, it is quite radical, but at times situations require new approaches. This is a new approach and I give full credit to the South Australian Government which acted on the strength of a very good committee report. Lawyers can pick holes in it; lawyers can pick holes in anything, but they are especially able to pick holes in this. I admit that; I could pick plenty of holes in it. However, the Government believes the defendants have had a pretty good go and it is time it gave the victims a bit of a turn.

The Hon. Lyla Elliott: Hear hear!

The Hon. I. G. MEDCALF: We are in an enormously difficult area and we cannot necessarily cure the problem by legislation. However, the Government believes that, as far as possible, violence should be outlawed and punished severely.

I ask members to support the Bill.

Question put and passed.

Bill read a second time.

In Committee

The Deputy Chairman of Committees (the Hon. I. G. Pratt) in the Chair; the Hon. I. G. Medcalf (Attorney General) in charge of the Bill.

Clause 1: Short title and citation—

The Hon. W. M. PIESSE: I absolutely support this matter being retained in the Court of Petty Sessions. I hope it never gets to the Family Court. The essence of the whole matter is the lack of delay in dealing with the situation as near as possible to the time it occurs, and that is one of the most important aspects when dealing with these issues.

Clause put and passed.

Clauses 2 and 3 put and passed.

Clause 4: Part VII repealed and substituted—

The Hon. J. M. BERINSON: The Attorney General's reply to the second reading debate was very comprehensive and helpful. Indeed, after his first 15 answers to the question of appropriate court, I must confess I felt rather satisfied with the fact that I had deliberately done no more than quote the Law Society's opinion on that subject, rather than take the further step of adopting it.

I also agree with the Attorney General that it is not all that difficult for people—not just lawyers—to pick holes in legislation of this kind and I agree further that there is something to be said for just boring ahead, in some circumstances, when the conclusion has been reached that a new approach is required.

You, Sir, will appreciate that I go very far along the way with the Attorney General in the approach he took in his reply. My reservation applies to his treatment of the question of *ex parte* applications. I believe this raises more serious questions and should not be passed over in the same way as some other considerations can reasonably be passed over.

In particular, I make it clear that, in my earlier comments, I did not suggest that provision should not be made for an *ex parte* application. It was not part of any argument that I put that a summons should be served on every occasion or that the defendant should be made aware of a complaint on every occasion. What I was suggesting was that, in accordance with normal practice in respect of *ex parte* applications, whenever such an application was made the complainant should be required to show some reasons for the application taking that form.

I put it to the Attorney quite seriously that, with the legislation in its present form, it would be not only an unwise, but also a really foolish complainant who would ever approach the court with anything other than an *ex parte* application.

In terms of proposed new section 172(4) the complainant merely has to turn up and say, "I have a complaint." The only evidence available to the court is the complainant's evidence, because the defendant has neither been served with nor made aware of the complaint and, therefore, is

obviously in no position to make a reply. That being the only evidence available, what grounds would exist for the magistrate to deny the application and to issue an order?

This order can be quite serious. In response to the question of the Hon. Win Piesse, it allows the justices to make an order imposing such restraints upon the defendant as are necessary or desirable to prevent him from acting in the apprehended manner, which is to say the manner described by the complainant.

Further, section 172(5) provides the ability to extend the order with the effect of restricting the defendant's access to his own home. Therefore, the consequences of an order on the status of the defendant are potentially very serious indeed. That does not deny the need, in proper circumstances, for such an order to issue in the absence of the defendant. So far as I can see, it does not justify a procedure with that sort of consequence taking place in his absence, without adequate explanation.

That was the sole point of my earlier comment on this *ex parte* question. It is a serious question, one which justifies its separation from the approach which I have agreed with the Attorney General can be a bore-ahead approach.

The Hon. I. G. MEDCALF: I am sure the honourable member needs no reminding that this provision provides that the person committing the assault must be served with a summons after an order is made in his absence.

A wife may complain to the court that she has been beaten up, and seek an order without a summons having been served on the husband. In that case the application comes before the justices without the appearance of the husband, or without his having been served with a summons. The order can be based on the wife's complaint, but the justices shall summon the defendant to appear before them to show cause why the order should not be confirmed. In other words, an immediate order can be made so that immediate relief is given to the victim of domestic violence. However, the husband then must be summoned to appear to show cause why the immediate order should not be confirmed. That is all that happens. The summons must be served and the defendant must appear. In other words, there is a safeguard.

This provision can be regarded as providing an interim order. It is true that in the intervening period the order does operate, but how else could the situation be? What relief would it be to the wife if the order did not operate? In effect, we have taken the boot off the assailant's foot and given the victim a bit of a boost. I make no excuse for that. One must accept or not accept that philosophical concept. I know the Hon. Joe Berinson has said he accepts it.

There may be a way of getting around the problem he raises, and I am prepared at a later time—certainly not now—to look again at this provision to determine whether a legal device is available whereby we can improve slightly the defendant's position, with the proviso that we do not take away immediate relief to the victim. If we did not maintain immediate relief the whole exercise would be fruitless. If we were to base the provisions on too strict a science of the United Nations covenant on political and civil rights, I am sorry, I just would not be in that.

The Hon. ROBERT HETHERINGTON: I always enjoy listening to the Attorney General when he debates matters within his portfolio. I must say that his reply to the second reading debate was very persuasive. My reservations still stand in regard to areas we must watch, but they are much muted by his comments.

The Attorney mentioned that the provision relating to a complaint made by a police officer is objected to by some people. Certainly I welcome this provision; it is highly desirable because it makes it possible for a third person, someone who understands the law, to make a complaint with the view to obtaining an order. Although the provision may have dangers in it, it is one of the desirable provisions of the legislation, and will make it more likely that a victim will obtain help from the police—the police will be the helpers rather than the helpless.

I have the same worries as Mr Berinson, but I accept that the Attorney General, as he said, will look again at the provision. I feel rather happier than when we entered this debate.

Clause put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by the Hon. I. G. Medcalf (Attorney General), and transmitted to the Assembly.

ADJOURNMENT OF THE HOUSE: SPECIAL

THE HON. I. G. MEDCALF (Metropolitan—Leader of the House) [10.48 p.m.]: I move—

> That the House at its rising adjourn until Tuesday, 2 November.

Question put and passed.

ADJOURNMENT OF THE HOUSE: ORDINARY

THE HON. I. G. MEDCALF (Metropolitan—Leader of the House) [10.49 p.m.]: I move—

That the House do now adjourn.

Legislative Council: Late Sitting

THE HON. ROBERT HETHERINGTON (East Metropolitan) [10.50 p.m.]: We are about to adjourn until Tuesday, but we sat during two nights two weeks ago to debate the Industrial Arbitration Amendment Bill (No. 2), sat only two days last week, and this week we are to sit only two days. Can either the Leader of the House or the Minister in charge of that Bill explain why it was necessary to sit on those nights? I was under the impression that the Government wanted the Bill hurried through this place so that it could be debated in another place. However, since it has left this House it has been dealt with only briefly in that other place. The Government seems to be in no hurry whatsoever to conclude the debate on that Bill in that other place. It is quite beyond me to understand why we could not have been given time to debate that Bill carefully and to do so when we were in full possession of our faculties. The Opposition wanted that course followed. I must say that on reading my remarks made during those two nights—I do not retract any of them—I realise they would have been clearer and a little less woolly had they not been made at, say, six o'clock of the morning after the day we had sat until 3.30 a.m.

The only reason for our following this course, is that, judging from what happened—I am prepared to listen to any other reason if one can be given—the Minister felt he could not last under continued debate of that Bill because he was not capable of handling it for a lengthy period. I can think of no other reason for the Government's bulldozing that measure through this House in the time it did when so much time has been available since, and it is obvious that the Premier was in no hurry to get on with the Bill.

THE HON. G. E. MASTERS (West—Minister for Labour and Industry) [10.53 p.m.]: The honourable member suggested that the Industrial Arbitration Amendment Bill (No. 2) was pushed through this House in a hurry. I make it clear that when the legislation came forward it was obvious to members on this side of the House that the tactics used by the Opposition were to delay the legislation. Before the dinner suspension it was obvious that the Opposition intended to delay the legislation. The Government proceeded on that basis, and the Opposition tried to filibuster during that debate. It was obvious to the Government that the only way to get through the debate was to see it through that night. The debate would have gone on for days and days if the Government had not followed that course.

We had allowed the legislation to be before the Parliament for something like three weeks, and we allowed appropriate time for its consideration. It is now in another place where there is ample time for debate.

I refute the proposition that the legislation was pushed through; it was put through in a proper and competent manner and was dealt with in the manner it should have been.

Question put and passed.

House adjourned at 10.55 p.m.

QUESTIONS ON NOTICE

613. *This question was postponed.*

FUEL AND ENERGY

Wundowie Charcoal, Iron and Steel Industry: Board

624. The Hon. D. K. DANS, to the Leader of the House representing the Minister for Fuel and Energy:

Further to question 544 of 30 September relating to the State Energy Commission, I ask—

(1) As it is now four weeks since the question was asked, will the Minister now supply the answer?

(2) If not, why not?

The Hon. I. G. MEDCALF replied:

(1) and (2) I have followed up the member's original request for information and am advised that the information has been obtained and a draft letter is now being prepared.

PASTORAL LEASES

Kalbarri

625. The Hon. P. H. LOCKYER, to the Minister for Labour and Industry representing the Minister for Lands:

Is the Lands Department considering opening up some pastoral lease country near Kalbarri for conditional-purchase land?

The Hon. G. E. MASTERS replied:

The department is reviewing an application for conditional purchase land release which affects Mt. View Station. Although no final decision has been confirmed I am advised that a recommendation against release has been made.

STATE EMERGENCY SERVICE

Chapman Valley Shire

626. The Hon. TOM McNEIL, to the Leader of the House representing the Deputy Premier:

Further to question 261 on 6 May 1982, will the Deputy Premier advise when he is likely to supply the detailed reply he refers to?

The Hon. I. G. MEDCALF replied:

The Deputy Premier advises that he regrets the delay in forwarding the further response. However, the member will receive a full written reply within a few days.

PUBLIC WORKS: DEPARTMENT

Construction Division

627. The Hon. GARRY KELLY, to the Minister for Labour and Industry representing the Minister for Works:

(1) What is the future of the construction division of the Public Works Department?

(2) Is there any truth in the rumours that the division is about to be closed?

The Hon. G. E. MASTERS replied:

(1) An examination into the desirability of rationalising the separate construction and maintenance sections into one integrated building construction and maintenance group is to be undertaken.

(2) The Minister for Works is not aware of any rumours relating to the section being closed.

EDUCATION DEPARTMENT

Budget: Expenditure

628. The Hon. D. K. DANS, to the Chief Secretary representing the Minister for Education:

I refer the Minister to his reply to question 479 of 21 September 1982 wherein he states that—

> . . . the major cause of increased expenditure at the end of the year had been the payment of a 7.5 per cent salary increase to teachers retrospective to 28 May 1982.

and ask—

(1) What was the final month's expenditure of the department for the year 1981-82?

(2) Of the figure in (1), what amount was attributable to the 7.5 per cent salary increase operative from 28 May?

The Hon. R. G. PIKE replied:

(1) $49 333 151.

(2) $1 650 000.

WESTERN AUSTRALIAN PORTS

Foreign Naval Vessels

629. The Hon. LYLA ELLIOTT, to the Minister for Labour and Industry representing the Minister for Transport:

(1) Since 1 January 1982 how many foreign naval vessels have called at Western Australian ports?

(2) Of these, how many were—

(a) nuclear powered;

(b) nuclear armed?

The Hon. G. E. MASTERS replied:

(1) 49.

(2) (a) Seven;

(b) this information is not available to the State Government; it is suggested that the member address her inquiries to the Commonwealth Government which has responsibility for defence and security matters.

TOWN PLANNING

Armadale: Reservation

630. The Hon. I. G. PRATT, to the Chief Secretary representing the Minister for Urban Development and Town Planning:

In relation to the portion of land being part lot 14 and portion lot 100 and 101 Streich Avenue, Armadale—

(1) Is this land reserved under the metropolitan region plan?

(2) If "Yes" to (1)—

(a) when was the land first reserved;

(b) for what purpose was the reservation made at that time; and

(c) has the purpose of the reservation since been changed, and if so, when, and for what reasons?

(3) Has the title of this property been transferred to the MRPA, and if so, when?

(4) Has the property been valued to establish a fair compensation figure?

(5) If "Yes" to (4)—

(a) how many valuations have been made;

(b) on what dates were they made; and

(c) what were the valuations?

(6) Has an offer been made to the previous owner?

(7) If "Yes" to (6), what figure has been offered?

(8) What is the practical significance of this particular piece of land to the planning of the Town of Armadale?

The Hon. R. G. PIKE replied:

(1) Yes.

(2) (a) 30 October, 1963;
(b) parks and recreation;
(c) yes, in 1977 a portion of the original reserve was amended from "parks and recreation" to "important regional road".

(3) Yes, by reason of resumption gazetted on 6 November 1981.

(4) Yes.

(5) (a) to (c) As the question of compensation for acquisition is likely to be the subject of litigation, I am not prepared to prejudice those proceedings by responding at this time.

(6) Yes.

(7) $150 000.

(8) Part of the land is reserved for parks and recreation. The remainder is required for Armadale Road and in the future more than 50 per cent of the landholding could be required for the grade separated crossing of Armadale Road over the railway.

CULTURAL AFFAIRS: FILMS

Tax Concessions: Abuse

631. The Hon. GARRY KELLY, to the Attorney-General:

The "Four Corners" television programme of 23 October detailed the activities of a Perth-based organisation called United American & Australasian Film Productions (UAA) headed by one John Picton-Warlow. According to the programme, UAA is involved in setting up partnerships to raise finance in Australia and the United States for film production—mainly American films, as it turns out. The money, the bulk of which is US, is paid through UAA's Australian books and the Federal Government's tax concession on film production is then claimed. As a result of this money shuffling, the tax write-off is increased from 150 per cent to 375 per cent of the money invested. The programme stated that through UAA the Australian taxpayers have in effect been subsidising Hollywood. In the light of these disturbing allegations, will the Attorney-General have the activities of UAA investigated—

(a) to ensure that State law is being observed;

(b) to determine whether the Commonwealth authorities should be involved;

and will he make the results of such investigation available to the House?

The Hon. I. G. MEDCALF replied:

(a) and (b) I did not see the programme referred to in this question. I would say, however, that if there was evidence, in this or any other case, of a breach of the Companies Code, the Commissioner for Corporate Affairs would take appropriate action. If the member has any evidence of such a breach I would suggest that he make it available to the commissioner. Without such evidence an investigation is not warranted.

The question of taxation avoidance is a matter for the Commonwealth Government. It is apparent from an answer given by the Commonwealth Treasurer in the House of Representatives on 14 October 1982, that the Commonwealth is aware of the situation referred to.

HEALTH: NURSING POST

Yalgoo

632. The Hon. P. H. LOCKYER, to the Chief Secretary representing the Minister for Health:

(1) What is the cost of the new nursing post at Yalgoo?

(2) When will the nursing post be operational?

The Hon. R. G. PIKE replied:

(1) Subject to minor adjustments to provisional sums the cost is $103 189.

(2) The nursing post became operational on 9 September 1982.

INDUSTRIAL AWARD

Westrail: Breach

633. The Hon. FRED McKENZIE, to the Minister for Labour and Industry:

(1) Is the Minister aware that the West Australian Locomotive Engine Drivers, Firemen's and Cleaners' Union lodged complaint No. 562 of 1982 in the Industrial Court against Westrail for a breach of award No. 13 of 1973 and in respect of clause 36 on 22 September 1982?

(2) Is he aware that, although the union desires an early hearing of the breach, the earliest the matter can be heard is 18 February 1983, some five months after lodgement?

(3) If he is not aware of the circumstances, will he investigate the reasons for the long delay between lodgement of the claim and the hearing date?

(4) Is it a fact that this case is not an isolated instance?

(5) What action will he take to overcome these long delays if they are proven to exist?

The Hon. G. E. MASTERS replied:

(1) to (4) Complaint No. 562 of 1982 was lodged with the Industrial Magistrate on 22 September 1982, and has been listed for hearing on 4 March 1983.

Currently there are 153 complaints listed for hearing by the Industrial Magistrate. A further 111 complaints will be allocated hearing dates on 4 November 1982.

Complaints being lodged now are being listed for hearing not earlier than April 1983.

Complaint No. 562 of 1982 has received the same attention as other complaints lodged with the Industrial Magistrate.

(5) I will investigate the problem with a view to relieving the pressure and reducing the delays.

EDUCATION: DEPARTMENT

Budget: Wage and Salary Increases

634. The Hon. D. K. DANS, to the Chief Secretary representing the Minister for Education:

In respect of wage and salary increases of the Education Department, what total amount was registered as 1981-82 expenditure?

The Hon. R. G. PIKE replied:

$18 433 000.

EDUCATION: PRIMARY SCHOOL

Useless Loop

635. The Hon. P. H. LOCKYER, to the Chief Secretary representing the Minister for Education:

Has any progress been made with negotiations with the Shark Bay salt venture with a view to improving the school building at Useless Loop?

The Hon. R. G. PIKE replied:

The matter of appropriate permanent school facilities at Useless Loop has been raised in the negotiations with the company. These have not yet been finalised.

LIMITED LIABILITY PARTNERSHIPS

Legality

636. The Hon. GARRY KELLY, to the Attorney-General:

(1) What is a limited liability partnership?

(2) Are limited liability partnerships permitted under WA law?

The Hon. I. G. MEDCALF replied:

(1) A limited liability partnership is a partnership that has sought and obtained registration under the Western Australian Limited Partnership Act 1909.

(2) Yes.

ELECTORAL: NORTH PROVINCE

By-election

637. The Hon. TOM STEPHENS, to the Chief Secretary:

(1) Can the Chief Secretary advise the exact number of notices of apparent failure to vote at the 31 July 1982 by-election in North Province that have been

sent out to electors in the last few weeks?

(2) Is he aware that the failure of any elector to return this notice will result in that elector's name being struck from the roll pursuant to section 156?

(3) Does the Chief Secretary realise that currently these notices are being posted to thousands of people marked to their residential address despite the fact that in many places in the north there is no mail delivery to residences?

(4) Will he consider urgent steps to enact legislation that will—

(a) remove the current legal requirement that necessitates this striking of names from the roll; and/or

(b) alter the information required on the electoral enrolment card so that it contains both the postal and residential address of the elector?

The Hon. R. G. PIKE replied:

(1) 7319.

(2) Yes.

(3) Yes, however at present no information is available to me as to the effect of these factors or the degree of correlation—if any—between them.

(4) (a) No;

(b) the matter is under examination at the present time.

ROADS

Roundabouts

638. The Hon. FRED McKENZIE, to the Minister for Labour and Industry representing the Minister for Transport:

(1) Is the Minister satisfied that local government authorities are constructing roundabouts to a standard required in the interests of road safety and other matters related to traffic flow?

(2) If he is not satisfied, what action does he propose to take to prevent further construction of roundabouts that do not meet standard requirements?

The Hon. G. E. MASTERS replied:

(1) and (2) It is understood that local authorities are constructing roundabouts to improve safety and traffic management in streets under their control and that these are being constructed in accordance with design guidelines established in other States. In undertaking these works local authorities would need to comply with the provisions of the Local Government Act and any other Statutes relating to the regulation or control of traffic.

If there are any particular situations which the member believes are unsatisfactory, it is suggested he should take them up in the first instance with the appropriate local authority.

POLICE

Yalgoo

639. The Hon. P. H. LOCKYER, to the Minister for Labour and Industry representing the Minister for Police and Prisons:

When will the new police facilities at Yalgoo be operational?

The Hon. G. E. MASTERS replied:

29 October 1982.

ROADS

Roundabouts

640. The Hon. FRED McKENZIE, to the Minister for Labour and Industry representing the Minister for Police and Prisons:

(1) Has the Police Department been preparing a case to challenge the construction of roundabouts by local government authorities?

(2) If so, what was the basis of the challenge?

(3) Have instructions been issued to those preparing the case to discontinue that preparation?

(4) If so, who was responsible for having such instructions issued?

The Hon. G. E. MASTERS replied:

(1) No.

(2) to (4) Answered by (1)

HEALTH: CHEMICAL PCB

Incinerator Ship

641. The Hon. PETER DOWDING, to the Chief Secretary representing the Minister for Health:

Following on the announcement by the Victorian Minister for Conservation, Mr

Walker, *The West Australian*, 14 October 1982, that the incinerator ship *Vulcanus* will visit Victoria from 22 November to dispose of the toxic chemical PCB, can the Minister advise if this ship will also be invited to Western Australia to dispose of stocks of PCB stored by the Government and private companies?

The Hon. R. G. PIKE replied:

No. Waste PCB is satisfactorily incinerated by a private company in Welshpool to the satisfaction of Public Health, particularly the clean air section. The incinerator is specially designed and tests have shown that it is an environmentally safe method of disposal.

PRISON

Roebourne

642. The Hon. PETER DOWDING, to the Minister for Labour and Industry representing the Minister for Works:

Following on the Minister's advice that tenders are being called for the erection of the Roebourne new regional prison, would the Minister say where precisely this prison is to be sited?

The Hon. G. E. MASTERS replied:

The new Roebourne regional prison is to be sited on lot No. 164, diagram 84961, north of Roebourne, approximately 6 kilometres on the east side of the Roebourne-Point Samson-Wickham Road, just before the Cossack Road turnoff.

PRISON

Roebourne

643. The Hon. PETER DOWDING, to the Minister for Labour and Industry representing the Minister for Police and Prisons:

(1) Is it proposed to build houses for staff at the Roebourne regional prison?

(2) If so, how many, and in what town?

(3) If the houses are being built other than in Roebourne, why is Roebourne not the site?

The Hon. G. E. MASTERS replied:

(1) Yes.

(2) Three houses will be built on the site of the new regional prison and the balance required to staff the institution will be constructed on land owned by the Government Employees' Housing Authority.

(3) I am unaware of GEHA land holdings.

TAB

Turnover

644. The Hon. PETER DOWDING, to the Minister for Cultural Affairs:

(1) What was the turnover of the TAB during the year 1981-82?

(2) Is it a fact that approximately one-third of that turnover came from betting on Eastern States' races?

(3) Would the Minister agree that some proportion of the profits of the TAB ought to be used to develop popular sporting and recreational facilities in such areas as the north-west?

The Hon. R. G. PIKE replied:

(1) $263 253 932.

(2) Yes.

(3) No. However, funds from the sports culture instant lotteries will be used to assist sport and receation in Western Australia.

LAND: NATIONAL PARK

D'Entrecasteaux

645. The Hon. FRED McKENZIE, to the Minister for Labour and Industry representing the Minister for Conservation and the Environment:

Further to question 454 of 16 September 1982, will the Minister advise—

(1) Whether the interdepartmental working group's recommendations differ from those of the Select Committee with respect to who negotiates the termination of grazing leases; i.e. does the working group favour termination prior to the land being entrusted to the National Parks Authority, while the Select Committee nominates the National Parks Authority for the task of terminating the leases?

(2) Whether negotiations have begun with holders of grazing leases within the proposed National Park with respect to termination of the leases and compensation of lessees where appropriate?

(3) Which Government department is conducting the negotiations referred to in part (2) to this question?

The Hon. G. E. MASTERS replied:

(1) Although the working group did not specifically address the issue of responsibility for negotiating the termination of grazing leases, it was inherent in the recommendations that as Land Act leases administered by the Department of Lands and Surveys, that department would be directly involved. Whilst there would be no objection to the National Parks Authority undertaking negotiations with lessees in full consultation with the Lands Department, ultimate responsibility for termination must rest with the department. As stated in part (2) of the answer to question 454 of 16 September 1982, it is not possible to include areas subject to existing leases in the National Park unless prior determination occurs.

In that context the working group's recommendations differ from the Select Committee's which considered "that the National Parks and Wildlife Service should negotiate the termination of the leases involved".

(2) and (3) Negotiations with the respective lessees have not taken place pending finalisation of consideration relating to the overall position. However, former special lease 3116/4559 for the purpose of grazing and comprising about 3490 hectares has since reverted to the status of Crown land and this parcel is currently being considered on an individual basis. Subject to a favourable decision, inclusion into the Class "A" National Park reserve would of course not be possible until the next Reserves Bill in November 1983.

TRANSPORT: BUSES

MTT: Joondalup Depot

646. The Hon. FRED McKENZIE, to the Minister for Labour and Industry representing the Minister for Transport:

(1) Were tenders called for the construction of the Joondalup bus depot?
(2) If so, how many were received?
(3) What was the amount of—
  (a) the highest tender; and
  (b) the lowest tender?
(4) Who was the successful tenderer?
(5) What was the successful tenderer's price?

The Hon. G. E. MASTERS replied:

(1) The MTT's engineering services manager has the overall responsibility for this project and control of the work is supervised by a building co-ordinator.
Tenders are being called for various contractors as the project progresses.
Two stages have already gone to tender—the earthworks which has been let, and the bitumen paving which is now being considered.
(2) Six tenders were received for the earthworks contract, but two did not conform to tender specifications and therefore could not be considered. Four tenders have been received for the bitumen paving work.
(3) (a) The highest conforming tender for the earthworks was $74 000;
  (b) the lowest conforming tender for the work was $56 000.
(4) WA Gravel and Paving Pty. Ltd.
(5) $56 000.

TRAFFIC: MVIT

Deficit or Surplus

647. The Hon. J. M. BERINSON, to the Chief Secretary representing the Minister for Local Government:

What was the surplus or deficit of the Motor Vehicle Insurance Trust for—
(a) the six months to 30 June 1982; and
(b) the 12 months to 30 June 1982?

The Hon. R. G. PIKE replied:

(a) $20.210 million surplus;
(b) $11.615 million surplus.

TRAFFIC: MVIT

Participating Insurers

648. The Hon. J. M. BERINSON, to the Chief Secretary representing the Minister for Local Government:

Under the existing provisions of the Motor Vehicle Insurance Trust Act, what payments to or by the SGIO as a participating insurer would be required on the estimated surplus or deficit of the MVIT in each year from 1972-73 to 1980-81 inclusive?

The Hon. R. G. PIKE replied:

I am advised that pools have been finalised only in respect of 1972-73, 1973-74, and 1974-75 and that for those years the SGIO received distributions of $277 948, $267 396 and $302 469 respectively.

As pools have not yet been finalised for the remaining years, it is not possible to say what the SGIO's position would be if the current provisions of the Act were to continue unaltered.